

96
No. 2413

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME IV.
(Pages 1121 to 1500, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

FILED
JUL 1 - 1914

No. 2413

United States
Circuit Court of Appeals

For the Ninth Circuit.


Transcript of Record.
(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME IV.
(Pages 1121 to 1500, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

Same as

876

896

(Testimony of Edwin F. Meyer.)

daily from dealers all over the country, are checked and weighed in the same manner as your shipments, and, while in a few instances shortages have been noted, this is not the rule. Special care will be given your shipments in the future, and it is hoped you will have no [1018—966] cause for complaint. Respectfully, blank Paymaster, U. S. Navy, General Storekeeper. Great Western Smelting & Refining Company, Ninth Avenue South, Seattle, Washington.

Mr. ALLEN.—You said you wrote that letter?

A. Yes, sir.

Mr. MORRIS.—What is the question?

Mr. ALLEN.—I say, I understood he wrote that letter.

A. Yes, sir.

Mr. SHIPLEY.—You dictated that letter personally?

A. Yes, sir, I wrote it, I actually did the physical work here.

Q. After the conversation with Lockwood?

A. Yes, sir.

Q. Was there anything done at that time, or near that time, in regard to testing the scales to ascertain their correctness?

A. Sometime after that Paymaster Spear's attention was called to it, and he ordered that a requisition be prepared for—an order be placed with some expert for testing the scales. I don't know the time, I haven't asked for the folder in that particular case; I didn't think it was necessary.

Q. Are there any other papers in that folder that

(Testimony of Edwin F. Meyer.)

you desire to call to the attention of the jury?

A. No, sir.

Q. Is that the only conversation that you ever had with the witness Lockwood touching this subject matter?

A. I don't recall any other in particular. I made it a rule to visit these storehouses at intervals, and would talk with the storemen in charge of them from time to time.

Q. At the time you received this letter from Mr. Goldberg, or Mr. Goldberg's corporation signed by him, and the time you wrote the reply you read, and had the conversation with the [1019—967] witness Lockwood, were you involved in any conspiracy or any improper scheme or combination with Mr. Goldberg or any of the officers or employees of the Great Western Smelting & Refining Company?

A. No, sir.

Q. Did your actions in regard to the testing of these scales and to the inquiries from Mr. Lockwood have any connection with any improper dealing or association between you and Mr. Goldberg, or any other person?

A. It was a perfectly regular procedure, sir, that would be followed in the course of ordinary handling of the business.

Mr. ALLEN.—Here is that exhibit you were asking for a while ago and couldn't find (handing same to Mr. Morris).

Mr. MORRIS.—We have gone into it so fully, the exhibit, and Mr. Meyer has also explained about sign-

(Testimony of Edwin F. Meyer.)

ing Mr. Spear's name.

Mr. SHIPLEY.—Handing the witness Defendants' Exhibit "A-48," which has just been handed me by Mr. Allen, state whether or not that is the letter to which you referred in your previous testimony in regard to your having written it and signed Paymaster Spear's name to it.

A. Well, the letter was written in the office. I did not write it, that is not my phraseology. The letter was written by a clerk, there and it was put on my desk.

Q. That is the letter you referred to as having signed? A. Yes, sir.

Mr. ALLEN.—How about the signature?

A. I signed Paymaster Spear's name to it.

Mr. SHIPLEY.—Under the circumstances you have previously detailed to the jury?

A. Noting on the face of it "M," Meyer. [1020—968]

Q. You called my attention to the fact the letter was in evidence, the copy of which was just read. Was that exhibit "B"?

The COURT.—Yes, dated January 9th, 1909.

Mr. SHIPLEY.—Mr. Meyer, I will ask you whether, after the requisition was issued regarding a testing of the scales pursuant to instructions by Paymaster Spear, if the scales were regularly tested at that time?

A. They were tested subsequent to that time, yes, sir.

Q. What was the fact with regard to the receipt

(Testimony of Edwin F. Meyer.)

of reports and complaints as to shortages, as alleged, as being improper weights after that?

A. Well, shortages more or less continued. Our people were more accurate, I guess.

Q. Mr. Meyer, calling your attention to Government's witness, Mrs. Coombs, when was it that you lived at Mrs. Coombs' house?

A. I took a room there in the spring of 1906.

Q. And remained there for what length of time?

A. Until about September, or August I think it was, August or September, I don't remember which.

Q. Of what year?

A. 1906, for just a few months.

Q. Who lived with you at that place at that time?

A. My wife.

Q. And did you ever have any conversation with the defendant Goldberg over the telephone at the house of Mrs. Coombs? A. No, sir.

Q. Or from any other residence in the city of Seattle? A. No, sir.

Q. Why did you leave her house?

A. Why, I found her to be a very dangerous woman. [1021—969]

Mr. ALLEN.—Dangerous woman?

A. Yes, sir. She was about to cause a separation between my wife and myself.

Mr. SHIPLEY.—Have you ever had any conversation or any social relations with her, or her family, since your leaving her house?

A. I haven't spoken to her since I moved out, sir.

Q. Mr. Meyer, how long have you known the de-

(Testimony of Edwin F. Meyer.)

fendant Mr. Corder?

A. It may have been about 1905 or 1906; I am positive, sir.

Q. I wish you would describe to the jury what was the nature of your acquaintance and associations, if any, with Mr. Corder, and have been since that time up to the present time?

A. Well, as a representative or agent of the Pacific Engineering Company, he had business with the navy yard, and, like numerous other gentlemen, representatives of these local houses and other houses, he made frequent visits to the Storekeeper's Office, and I became acquainted with him in that way. Our relations have been purely business.

Q. Did you ever have any intimate personal or social relations or acquaintance with him?

A. No, sir, not any more intimate than with hundreds of other representatives of other concerns.

Q. You heard the testimony of the Government's witness, I believe it was a bookkeeper in Mr. Corder's office, in regard to your coming to the office on one or two occasions and going out of the office in company with Mr. Corder. State what the facts in regard to such a visit were.

A. As I remember, I visited Mr. Corder's office or place of business about, or not more than twice—well, it may have been three times; I think probably twice would cover it. On [1022—970] one occasion he wasn't there; on the other occasion he was. I talked with him for a few minutes and we went out together. I think we went probably as far as

(Testimony of Edwin F. Meyer.)

the corner and he went his way and I went mine.

Q. And when was that, approximately?

A. Oh, that was subsequent to this transaction sometime, maybe in 1909 or '10; I don't remember exactly.

Q. What was the occasion of your visit to Mr. Corder's place of business on those two occasions?

A. Well, once I think it was in connection with the delayed deliveries.

Q. What do you mean by that? Explain the facts to the jury.

A. Well, we were writing him—it was in connection with this card system. He had numerous awards upon which the material had not been delivered, and it was necessary from day to day for these clerks to write to him, send him notices of the failure to deliver the material called for in these awards. Now, on one occasion,—his place of business was near the landing of the steamer there, but to the right, about a block out of my way up town—and on one occasion I went, stopped in there to inquire about some of these deliveries. On another occasion I remember going in there for information which I didn't get. It was in connection with some hose couplings. The Navy Department, after hose is worn, condemns it and we dispose or sell the hose and condemn the couplings to the scrap heap. It occurred to me these couplings could be utilized, and I went to get an idea of the value of these couplings in order we might purchase hose without couplings and put the old couplings on the good hose, if possible.

(Testimony of Edwin F. Meyer.)

Q. Was that the occasion of your calling on Mr. Corder?

A. That is one of the occasions, yes, sir. [1023—971]

Q. Was he a dealer in that line of goods?

A. Hose, yes, sir, engineering supplies.

Q. Mr. Meyer, you have referred to delays in deliveries by Mr. Corder's firm. State what that resulted in and what action you personally took in regard to Mr. Corder.

A. Well, these delays were numerous, and I took the matter up with the Storekeeper, who instructed me to ask the Purchasing Pay Office, that is, to put in motion, get this letter started, asking the Purchasing Pay Officer, in view of these delinquent deliveries, to debar the firm of W. A. Corder & Company until they had completed deliveries or otherwise.

Q. What do you mean by "debarring them from bidding"?

A. That is, not to send them any more proposals.

Q. Was this matter taken up with the Department at Washington?

A. The correspondence, as I remember it, was sent over to the Purchasing Pay Officer here. Paymaster Ryan was in charge of the office. He returned it to the Storekeeper with an endorsement to the effect that Mr. Corder—

Mr. SHIPLEY.—State your personal knowledge, Mr. Meyer.

A. The correspondence was returned to the navy yard by the Purchasing Pay Office in Seattle with the

(Testimony of Edwin F. Meyer.)

information that Mr. Corder was bidding on supplies that no one else around here would furnish, or could furnish, and that he was a great deal of assistance to the Purchasing Pay Officer in furnishing material for the navy yard, and that, in the opinion of the office, Mr. Corder should not be debarred.

Q. And what was the action of the Bureau at Washington when your complaints reached there in connection with them or with the report of the Navy Pay Office of this city?

A. Well, when the correspondence was received in the General [1024—972] Storekeeper's Office Paymaster Spear was not satisfied with it, and directed that an endorsement be attached to it and forwarded to the Bureau of Supplies and Accounts at Washington, or to the Commandant, asking a decision of The Bureau of Supplies and Accounts at Washington.

Q. With what result?

A. That the Bureau of Supplies and Accounts at Washington sustained the decision of the Purchasing Paymaster in Seattle.

Q. Mr. Meyer, at the time you caused this complaint to be lodged against Mr. Corder and requested the Department to put him on the black list and debar him from public bidding on the United States Navy Yard at Bremerton, were you engaged in any conspiracy with Mr. Corder, or his concern, to secure business at improper profit, or in any fraudulent scheme, and was this letter written and this action taken in furtherance of any scheme to defraud in connection between yourself and Mr. Corder?

(Testimony of Edwin F. Meyer.)

A. It doesn't ask for any conclusion as to himself, but as to what Mr. Spear did.

Mr. ALLEN.—Answer that by yes or no.

A. No, sir.

Mr. SHIPLEY.—Mr. Meyer, was or was not the original communication calling the attention of the officials to the delinquencies of Mr. Corder, and requesting that he be placed on the black list, initiated by yourself personally?

A. As I remember, the matter was taken up with Mr. Spear personally.

A. By whom?

A. By myself, but I wouldn't initiate a—

Q. I am speaking of the complaint by which the matter was originated. Was that originated by you?

A. The complaint, yes, sir. [1025—973]

Mr. MORRIS.—Did you have something you wanted to explain there?

A. Well, I did, yes, sir.

The COURT.—Explain about what?

A. I was going to say I wouldn't initiate a proceeding of that kind without the direction of the Storekeeper in regard to debarring a contractor from doing business; it is too important a matter for me to initiate without his authority.

Q. I will ask you, Mr. Meyer, if there are any records or files in the possession of the United States Government showing these transactions which you testified about?

A. When I left the navy yard there was in the files of the Storekeeper's office the complete transaction.

(Testimony of Edwin F. Meyer.)

I have tried to get it since and haven't been able to find it, sir.

Q. Calling your attention to the cross-examination of Paymaster Spear, I will ask you if this is the same transaction concerning which Paymaster Spear was interrogated in which he testified that the complaints upon which this action was predicated were made by you to him? A. Same transaction, yes, sir.

Q. Mr. Meyer, outside of the two or three visits or calls of a business character which you made at Mr. Corder's place of business, have you ever at any time called upon him at the city of Seattle?

A. No, sir.

Q. The occasions when you saw him at Bremerton, state whether or not that was in connection purely with Government business, and whether there was anything of an improper character connected with any of those meetings.

A. He called at the office occasionally, as other representatives, for information relative to awards and payments, and frequently [1026—974] saw the Storekeeper.

Q. Mr. Meyer, how long have you been acquainted with the defendant Goldberg?

A. I think since about 1905, 1904—1905, sir.

Q. I wish you would describe to the jury the character of your acquaintance and the extent of it with Mr. Goldberg.

A. Well, Mr. Goldberg visited the yard, I think, during 1904 and 1905 occasionally, and on some of these visits I came in contact with him in an official

(Testimony of Edwin F. Meyer.)

way, got to knowing him in that way. We traveled back and forth on the boat together occasionally, and that was the extent of our acquaintance.

Q. State whether your acquaintance with him was a business acquaintance and association or of a social character.

A. Purely business, sir, purely business. Of course, when we met on the boat we would discuss things.

Q. Did you ever visit at his house?

A. Never, sir.

Q. Did he ever visit at your house?

A. No, sir.

Q. Did you ever accompany him at social gatherings on any occasion here in the city of Seattle?

A. I never have after leaving the boat; always parted there.

Q. Did you ever in your life hear anybody call Mr. Goldberg, or refer to Mr. Goldberg by the name of "Jimmie"?

A. No, sir.

Q. What was your customary mode of addressing Mr. Goldberg?

A. As I address every gentleman, everybody, Mr. I never call anyone by their first name, not even my best friend.

Q. Did you hear the testimony of Mr. Kettlewell in which he swore to this jury that in referring to Mr. Goldberg you made some [1027—975] reference to him as "Jimmie"?

Mr. ALLEN.—I object to that as being an abso-

(Testimony of Edwin F. Meyer.)

lutely misstatement of anything that this record shows. The testimony of Kettlewell was that Corder came in and says, "Why, that man Silverstone is a friend of Jimmie's." He never referred to this man in any way.

Mr. SHIPLEY.—If the Court please, at this time I take exception to the remark of counsel that my question was a misstatement of the fact, and appeal to the record, which shows beyond any question, that Mr. Kettlewell said that this witness Meyer said that Jimmie will be in here, or will do something, referring to Goldberg as "Jimmie," on the 11th day of January, 1908.

The COURT.—Let him answer the question. The jury will remember.

Mr. SHIPLEY.—Did you hear that testimony?

A. I did, yes, sir.

Q. Did Mr. Kettlewell state in this courtroom, or use the expression "Jimmie" with reference to this defendant Goldberg? A. He did, sir.

Q. Was that statement true or false?

A. Absolutely false.

Q. Did you ever in your life refer to Mr. Goldberg by the name of "Jimmie"? A. No, sir.

Q. Mr. Meyer, did you ever, at any of the times as testified by Mr. Kettlewell, or at any time prior or subsequent thereto, ever have any conversation or any communication with the defendant Goldberg of an improper character relative to any business transaction between himself or his concern and the United States Government? A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. Did you ever at any time do any act with the purpose and [1028—976] intention of aiding or assisting either the defendant Corder or Goldberg to perpetrate any fraud, or in furtherance of any improper scheme in connection with their business transactions with the United States Navy Yard?

A. No, sir.

Q. Or for any other purpose? A. No, sir.

Q. Mr. Meyer, you testified in this case relative to and concerning ship requisitions and their form and purposes. I will call your attention to Defendants' Exhibit "V" for identification and ask you to examine that file and state what it is?

A. This is a ship's requisition for supplies for the U. S. ship "Washington." It is not "in excess" of allowance. It is dated June 14th, 1908, at Santa Cruz, California.

Mr. ALLEN.—That in evidence now?

Mr. SHIPLEY.—No, it has only been identified.

Q. This requisition is from what files of what office? A. Yard files, Storekeeper's Office.

Q. At Bremerton? A. Yes, sir.

Q. You recognize that as one of the records of the General Storekeeper's files? A. Yes, sir.

Q. And this was brought into court and identified by Mr. House, was it not, as one of the exhibits?

A. It was.

The COURT.—What is the identification number?

Mr. SHIPLEY.—"V." We ask to have that admitted. It is in regard to the cruiser Washington.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—I only object, your Honor, as to its materiality.

Mr. SHIPLEY.—Well, we will connect them up. They are to show the issuance of zinc. [1029—977]

The COURT.—I see, this is June 14th, 1908.

Mr. ALLEN.—I submit, your Honor, the best evidence of issuing of zinc is that card which shows all of the issues of zinc for a period of years.

Mr. SHIPLEY.—Please produce that card. We will show whether that card is the best evidence and shows all of the zinc issued to the satisfaction of this jury before we get through. Does the record show “V” has been admitted?

Mr. ALLEN.—I object to it as being immaterial at this time.

The COURT.—Admitted.

(Papers referred to received in evidence and marked Defendants’ Exhibit “V.”)

Mr. SHIPLEY.—Mr. Meyer, before questioning you in regard to Defendants’ Exhibit “V” I will call your attention to Plaintiff’s Exhibit “H” introduced by the Government in this case. What is that, Mr. Meyer (handing same to witness)?

A. It is a card which we will call a stock card. It is kept with the goods in the storehouse.

Q. State to the jury between what dates Government’s Exhibit “8” shows the issue of zinc?

A. Between March 3d, 1908, and October 9th, 1908.

Q. For what purpose is that card kept in the navy yard?

(Testimony of Edwin F. Meyer.)

A. It is kept by the storeman who handles the material. It shows the expenditures, the receipts and expenditures of the article named, any article named in the yard.

Q. Mr. Meyer, what are the dates again?

A. From March 3d, 1908, to October 9th, 1908.

Q. Isn't there an earlier date than March on that card? A. No, sir. [1030—978]

Q. I will ask you whether nor not—

A. That is the expenditures. Of course,—you are referring to expenditures. December 3d is the date of the card.

Mr. ALLEN.—It is the history of zinc from December 30th? A. December 30th, 1907.

Mr. SHIPLEY.—Covers dates from sometime in December, 1907, up to what time?

A. Yes, sir, up to October 9th, 1908.

Q. Now, Mr. Meyer, I will ask you to state to this jury whether or not that card correctly shows the amount of zinc issued by the Puget Sound Navy Yard to ships of the United States Navy between that date in December, 1907, and—what is the last date? A. And October 9th, 1908.

Q. And October 9th, 1908?

A. Yes, sir it does not show as compiled from the requisitions themselves, that is—

Q. Mr. Meyer, what is the final record, if you know, in the General Storekeeper's Office showing the amount of zinc requisitioned for and delivered?

A. The final record?

Q. Yes, sir, the controlling record?

(Testimony of Edwin F. Meyer.)

A. Is the ship's requisition and the papers that go along with it. This would show, but frequently it doesn't show.

Q. Mr. Meyer, I will call your attention to one item on that card debiting, I think it is the ship "Kearsarge" with 1500 pounds of zinc. Is that a correct record of that transaction from your own personal knowledge?

A. The ship's requisition, which is for the "Kearsarge," called for 1500 zines—

Mr. SHIPLEY.—The simple question is, whether that record is a [1031—979] correct statement of the fact at this time?

A. No, sir, it isn't.

Q. Now, I hand you again Defendants' Exhibit "V," and ask you to turn to that requisition and state what it is and whether or not there is any call on there for zinc?

A. Well, this is a requisition I described a short while ago; it is a Washington requisition, dated June 14th, at Santa Cruz, California, Steam Engineering Department.

Mr. ALLEN.—June 14th what date?

A. 1908, at Santa Cruz, California, for 746 items of stores, item 268 of which is for 2,000—

Q. What is the number of that item?

A. 268, 2,000 pounds boiler zines 12 by 6 inches by 1½ inch.

Mr. SHIPLEY.—Mr. Meyer, are there any other items of zinc called for in that requisition?

A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. Mr. Meyer, calling your attention to the cards which are attached to that requisition, what do they show?

A. It shows a transaction—that is, the record of the requisition and the items that have been issued from time to time.

Q. What do you mean by the item that was issued?

A. That is, for the purpose of identification each article required on a requisition is numbered on the left-hand margin, and we call that the item number. That number corresponds to the numbers inserted on the card here (showing).

Q. And for what purpose is that card kept and prepared?

A. For the purpose of keeping a *recorder* track of these. The record order clerk makes these entries on here when the material is issued.

Q. State whether or not those items, giving the item number on [1032—980] this card, are preserved as a record to check against the requisition?

A. Yes, sir.

Q. And when those numbers are shown on that card what does that record indicate?

A. That the material has been issued.

Q. Has been issued, you mean delivered to the ship? A. Delivered to the ship, yes, sir.

Q. What does that record show with regard to the delivery of item 268, the requisition of the ship for zinc? That was the “California,” wasn’t it?

A. Delivery to the ship by invoice dated August

(Testimony of Edwin F. Meyer.)

18th, 1908, invoice number 704.

Q. What ship was that? A. "Washington."

Q. And that was for how many pounds of zinc?

A. 2,000 pounds.

Mr. ALLEN.—2,000 pounds. Here it is (showing).

Mr. SHIPLEY.—Mr. Meyer, what is the record on Plaintiff's Exhibit "8" as to the issuance of zinc to the ship "Washington"?

A. On the 20th of July—is that requisition 75, please?

Q. Yes. A. 2,000 pounds.

Q. Is that all of the zinc that is shown on that card issued to the ship "Washington"?

A. No, sir, there is another item of 2,000 pounds on April 13th to the "Washington."

Q. Is there any requisition number given to that?

A. Requisition number 47. I have those indexed there for convenience, Mr. Shipley, if you look at my pad in the book. [1033—981]

Mr. SHIPLEY.—If the Court will permit him to step down here and you can turn to that index it will expedite matters.

Mr. ALLEN.—Certainly.

Mr. SHIPLEY.—Handing the witness Defendants' Exhibit "W"—

Mr. ALLEN.—That just identified, Mr. Shipley?

Mr. SHIPLEY.—For identification, I think it is.

Q. What is that, Mr. Meyer?

A. That is another requisition from the ship "Washington," record order 360. It is ship's req-

(Testimony of Edwin F. Meyer.)

quisition number 47, item 10 on that is 2,000 pounds boiler zinc $\frac{1}{2}$ by 6 by 12.

Mr. ALLEN.—Is that going to be offered in evidence?

Mr. SHIPLEY.—Yes, we will offer that in evidence.

Mr. ALLEN.—Let's take a look at it. I have never seen it before in my life. (Examining same.) This is the March delivery?

Mr. SHIPLEY.—What is the date of this delivery?

A. April 13th 1908, on the card here.

Q. Calling your attention to the card that is attached to the ship's requisition, state what that record shows as to whether or not that zinc was in fact delivered.

A. That was delivered the 18th of April, according to the card, sir.

Q. That is, the card attached to the ship's requisition?

A. Yes, sir. That is, when I say it was delivered, the invoice shows.

Mr. ALLEN.—The invoice?

A. Invoice.

Mr. SHIPLEY.—And what do those invoices there show?

A. That the invoices were prepared and priced and delivered to the ship.

Q. To the man who is supposed to get the material.

The COURT.—Any objection to that offer?

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—I believe not, your Honor.

The COURT.—Admitted.

(Papers referred to received in evidence and marked Defendants' Exhibit "W.")

Mr. SHIPLEY.—Mr. Meyer, calling your attention to Defendants' Exhibit "Y" for identification, examine that.

A. That is the "St. Louis" requisition.

Q. What is the "St. Louis"? A. A cruiser.

Q. What fleet did she belong to?

A. Pacific Fleet.

Q. What is the date of that?

A. April 27th, 1908.

Q. And the requisition number?

Mr. ALLEN.—Mr. Shipley, that isn't in evidence.

Mr. SHIPLEY.—I am going to offer it, I am getting the date so it will be proper to be admitted.

The COURT.—It is already identified.

Mr. SHIPLEY.—We will offer this in evidence, your Honor.

The COURT.—Proceed. Admitted.

(Papers referred to received in evidence and marked Defendants' Exhibit "Y.")

Mr. ALLEN.—Very well, sir.

The COURT.—Proceed.

A. This is the "St. Louis" requisition for supplies not in excess of allowance, dated April 27th, 1908, requisition number 60.

Mr. ALLEN.—That is the "St Louis," now?

A. Item 1, 4,000 pounds boiler zincs 12 inch by 6 inch by 1/2 inch, invoice number 2399. [1035—983]

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—In connection with that requisition, as in Defendants' "V," is there a card attached?

A. Yes, sir.

Q. Showing delivery?

A. Item 1, invoice 2399, 4/30/08.

Q. What does that indicate?

A. That it was invoiced under that number 2399 on that.

Q. What does it mean, it was invoiced; what was done with the zinc?

A. Zinc delivered to the ship and covered by Storekeeper's invoice to the ship.

Q. Is that particular item of delivery indicated on this card, Government's Exhibit "8"?

A. St. Louis, April 30th, 4,000, yes, sir.

Q. And that same amount?

A. Yes, sir, 4,000 pounds.

Q. Now, calling your attention—

Mr. MORRIS.—What is the date, Mr. Meyer?

A. April 27th, is the date of the requisition.

Mr. MORRIS.—What exhibit have you in your hand?

A. Exhibit "Y."

Mr. SHIPLEY.—Calling your attention to Defendants' Exhibit "A-4" for identification—

Mr. ALLEN.—What ship is this, Mr. Shipley?

Mr. SHIPLEY.—That is the ship "St. Louis," is it not, Mr. Meyer?

A. Yes, sir.

Q. The same ship that the last preceeding one re-

(Testimony of Edwin F. Meyer.)

lated to? A. Same ship.

Q. State what that is, and the date of it.

A. Requisition number one from that ship, dated July 22d, 1908, Steam Engineering, not in excess of allowance. [1036—984]

Q. And is there an item of zinc called for in that requisition? A. Yes, sir, item 19.

Mr. SHIPLEY.—We will offer this in evidence, your Honor, as Defendants' Exhibit "A-4."

Mr. ALLEN.—Object to it for the reason heretofore given, your Honor.

The COURT.—Admitted.

(Papers referred to admitted in evidence and marked Defendants' Exhibit "A-4.")

Mr. SHIPLEY.—Mr. Meyer, is there a record attached to this exhibit showing the actual delivery of an item of zinc to the ship based upon this particular requisition?

A. There is an item here of August 3d, 1908, 1,000 pounds. I think that corresponds to that.

Q. Look and see if it does, to be sure.

A. Yes, sir, August 21st, invoice 974, for 1,000 pounds.

Q. Calling your attention to Defendants' Exhibit "A-10" I will ask you what that is.

A. That is another "St. Louis" requisition, dated September 22d, 1908, requisition number 8, for 1424 items of supplies not in excess of allowance.

Mr. SHIPLEY.—Was this ship one of the Pacific Fleet that was to be outfitted during the season of 1908 at the Puget Sound Navy Yard?

(Testimony of Edwin F. Meyer.)

A. Yes, sir.

Mr. SHIPLEY.—We will offer this folder in evidence, your Honor, as exhibit “A-10.”

Mr. SHIPLEY.—Examine that folder, please, Mr. Meyer, and state what it is, and call attention to any item there. [1037—985]

The COURT.—What is that, what exhibit is that?

A. “A-10.”

Mr. SHIPLEY.—Well, I have asked him to refer to any particular item relative to zinc. I didn’t get my question completed.

A. Item 782 is for 1500 pounds of boiler zinc.

Mr. ALLEN.—What ship?

A. “St. Louis.”

Mr. SHIPLEY.—And that was requisitioned for under what date?

A. September 22d, 1908.

Mr. ALLEN.—This, your Honor, is three months after this occurrence.

Mr. SHIPLEY.—And is there a card attached to that ship’s requisition, or any documents, showing the delivery of that particular item of zinc?

A. This requisition is not complete in that the invoice and other correspondence are missing. The article 782 has been checked.

Q. What does that checking indicate?

A. Delivery of the material, invoice 2,093, but the record is not here.

Q. Indicates the delivery to the ship?

A. Yes, sir.

Q. Or the ship’s officers? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Mr. Meyer, I will ask you a general question which is applicable to all of these ship's requisitions. In some instances there are requisitions in excess and in some there are requisitions not in excess. State in what cases, if any, the authority of the Bureau at Washington had to be obtained to authorize the delivery of the zinc called for in these requisitions.

A. Only in cases where it is "In excess of allowance."

Q. Now, what is this particular requisition you hold in your hand? [1038—986]

A. It is "In excess" requisition.

Q. In that instance no authority previous to delivery was necessary?

A. No authority higher than the ship.

Q. Let me ask you this question now with reference to all of these requisitions: Where the requisition was not "In excess of delivery," was there any authority or discretion lodged in the General Storekeeper's Office, and you as the Chief Clerk in charge at that time to refuse or pass upon the question of whether that amount requisitioned for should be delivered?

A. We delivered it if we had the material; if we didn't have the material—

Q. I say, was there any discretion lodged in you or the General Storekeeper's Office to pass upon the necessities of that particular ship? A. No, sir.

Q. For the supplies requisitioned for?

A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. Mr. Meyer, referring to Plaintiff's Exhibit "8," check that over with the Government's exhibit.

A. That shows on here 1500 pounds.

Q. That delivery is shown on that card?

A. Yes, sir.

Q. Calling your attention to Defendants' Exhibit "XX," state what that is, giving the requisition number and date, and the name of the ship.

A. Requisition 30, U. S. S. "Colorado," dated April 24th, 1908, Steam Engineering, "Not in excess"; Item 6, 6,000 pounds—

Mr. SHIPLEY.—Just a moment, please. We will offer this in evidence at this time. Let the record show the offer at this time of Defendants' Exhibit "XX." [1039—987]

Mr. ALLEN.—Objected to for the same reason and accepted for the same reason.

The COURT.—Admitted.

(Papers referred to received in evidence and marked Defendants' Exhibit "XX.")

Mr. SHIPLEY.—Examine that file, Mr. Meyer—let me ask you this question first: For the purpose of what ship, if any, was that requisition issued?

A. U. S. S. "Colorado."

Q. What was the "Colorado"?

A. A cruiser.

Q. Attached to what fleet? A. Pacific fleet.

Q. Was she one of the ships that you anticipated the necessity of supplying when you caused the requisitions for the purchase of the first 50,000 pounds and the second 50,000 pounds of zinc?

(Testimony of Edwin F. Meyer.)

A. One of the ships, yes, sir.

Mr. ALLEN.—This is the Pacific Fleet?

A. Pacific fleet.

Mr. SHIPLEY.—Pacific Fleet, yes.

A. Item 6, 6,000 pounds boiler zinc 12 by 6 by 1½.

Q. Does that record show or contain any record containing any delivery of that zinc to that ship?

A. Yes, sir.

Q. On what date?

A. Under date of April 25th, 1908, invoice 2,508, 6,000 pounds.

Q. What does Plaintiff's Exhibit "8" show?

A. That it was issued April 25th.

Q. The same amount? [1040—988]

A. Yes, sir.

Q. This was a requisition "Not in excess"?

A. "Not in excess."

Q. And required no authorization from the Bureau at Washington? A. Yes, sir.

Q. I direct your attention to Defendants' Identification A-22. Examine that folder and state what it is record of.

A. U. S. S. "Buffalo," requisition dated December 14, 1907, Steam Engineering requisition "Not in excess of allowance."

Q. Does that requisition show an item of zinc—just to show its materiality is all?

A. Yes, sir, 1,000 pounds, item 37.

Mr. SHIPLEY.—We will offer this exhibit, Defendants' Exhibit "A-22" for identification, in evidence.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Would that show on this card?

A. It doesn't show. I asked for the card preceding this.

The COURT.—Proceed.

(Papers referred to received in evidence and marked Defendants' Exhibit "A-22.")

Mr. SHIPLEY.—Mr. Meyer, I will ask you now to examine this exhibit, state whether or not it discloses the amount of zinc that was requisitioned for, and whether or not that was delivered.

A. Yes, item 37 here shows 1,000 pounds of boiler zinc, and item 37 delivered.

Q. Under what date? A. January 6th, 1908.

Q. In other words, the thousand pounds of zinc to the U. S. ship "Buffalo" was delivered in January what date?

A. January 6th, 1908. [1041—989]

Q. Is the delivery shown on the stock card, Government's Exhibit "8"?

Mr. ALLEN.—A thousand pounds?

A. 1,000 pounds.

Mr. SHIPLEY.—Mr. Meyer, calling your attention to Defendants' Exhibit "Z," and also to Defendants' Exhibit "A-1" for identification, I will ask you whether or not—what those records are, from what office, first; those files are the record of what office?

A. This is detached from "Z." That has no relation to this at all (showing). This "A-1" is a requisition from the "Kearsarge." This detached from another paper.

Mr. SHIPLEY.—At this time we offer in evidence

(Testimony of Edwin F. Meyer.)

Defendants' Exhibit "Z," Exhibit "A-1," Exhibit "A-2," Exhibit "A-3," Exhibit "A-21," Exhibit "A-6," Exhibit "A-7," Exhibit "A-5," Exhibit "A-8."

The COURT.—Same objection to all of them.

Mr. ALLEN.—I understand you offer them all for the same purpose?

Mr. SHIPLEY.—For the same purpose, yes.

Mr. ALLEN.—We object to their materiality.

Mr. SHIPLEY.—I haven't got quite through. And exhibit "A-11" and exhibit "A-9."

The COURT.—Is that all?

Mr. SHIPLEY.—That is all in this connection.

The COURT.—Very well.

Mr. ALLEN.—*Out* objection to all of them, and your Honor has ruled and they are admitted for that purpose?

The COURT.—All of these are admitted. They show a time covering a period as charged here in the indictment.

(Papers referred to received in evidence and marked respectively as follows: Defendants' Exhibit "Z," "A-1," "A-2," "A-3," "A-21," "A-6," "A-7," "A-5," "A-8," "A-11" and "A-9.")
[1042—990]

Mr. SHIPLEY.—Mr. Meyer, calling your attention to exhibit "Z" offered by the defendants, I will ask you with reference to what ship that requisition was issued?

Mr. SHIPLEY.—Calling your attention to the ship's requisition for supplies for the "Kearsarge,"

(Testimony of Edwin F. Meyer.)

what date was that issued?

A. March 20th, 1908, at Magdalena Bay, Mexico.

Q. And what does that record show in regard to a requisition or call for zinc?

A. Has a call here for 1500 sheets of zinc.

Q. What does that show with reference to the delivery? A. Delivered May 2d, 1908.

Q. On May 2d, 1908, as shown by the ship's requisition, how many pounds of zinc was in fact delivered to the U. S. ship "Kearsarge," how many pounds?

A. A copy of the invoice isn't here, but it shows 1500 sheets.

Q. Well, those zincs weigh—

Mr. ALLEN.—Just a moment. That is the requisition as it came in?

A. Yes, sir.

Mr. ALLEN.—You have no recollection?

A. I have the record here.

Mr. SHIPLEY.—Mr. Meyer, can you state the quantity of zinc that was delivered to the ship "Kearsarge" under that requisition as compared with the quantity of zinc which is credited upon [1043—991] Government's Exhibit "8."

Mr. ALLEN.—Reading from the exhibit?

Mr. SHIPLEY.—Yes.

A. This exhibit, exhibit "Z," shows that item 207, calling for 1500 sheets of zinc, was delivered to the "Kearsarge."

Mr. ALLEN.—Pardon me. Now, read that to the jury in the way it appears on there.

A. Item 207, 1500 sheets—

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—No, doesn't it say "S-zinc"?

A. Well, that is a notation made—

The COURT.—Well, read it as it is.

Mr. SHIPLEY.—Read it as it is and then you can make any explanation within your knowledge.

A. 207, unit number; on hand, none; due, none; ditto, required, 1500; notation in pencil, "S."

Mr. ALLEN.—"S" or a "5"?

A. "S"; zincs for boilers.

Mr. SHIPLEY.—Zincs?

A. Zincs for boilers 12 by 6 by $\frac{1}{2}$ inch, unit price 15 cents, total cost \$225.

Q. Mr. Meyer, is the difference of that zinc checked? A. Yes, sir.

Q. In what manner? A. Red pencil.

Q. What do these characters indicate and why were they placed there?

A. By some one of the other clerks, showing that the invoice had been prepared or the stuff issued.

Q. And is there any other record in that file showing that those zincs were in fact delivered?

A. There is a card here which shows that item 207 was issued May 2d, 1908. [1044—992]

Q. Mr. Meyer, can you state to this jury the weight of those zincs, of those dimensions called for under those specifications?

A. The sheets weigh between nine and ten pounds; nearer, ten, approximately ten pounds.

Q. You heard the testimony of Mr. Spear in this courtroom in regard to the weight of the zinc sheets?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—You want the jury to see this notation?

Mr. SHIPLEY.—We will offer it to them at the proper time.

Q. What is this exhibit, please (handing papers to witness)?

A. This is exhibit number "A-1."

Q. For what ship? A. "Kearsarge."

Q. Is there an item of zinc shown on that requisition? A. Item 3, 3,000 pounds.

Q. Under what date? A. June 8th, 1908.

Q. Does that record show a delivery of those 3,000 pounds of zinc? A. Yes, sir.

Q. On what date? A. June 9th, 1908.

Q. What was the ship "Kearsarge," one of the Atlantic Fleet? A. Battleship, yes, sir.

Q. Does Plaintiff's Exhibit "8" show this same delivery of zinc?

A. Some one took the card away.

Mr. MORRIS.—Here it is (handing same to witness).

Mr. SHIPLEY.—Can you identify it?

Q. Does that record contain a record of the delivery of that zinc?

A. It shows here only 2,000 pounds.

Q. The requisition itself shows a delivery of three? [1045—993]

A. Yes, of 3,000.

Mr. ALLEN.—Shows a call for three.

A. A call for three, and the item was delivered in full.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—Speak up loud.

A. It shows a call for three, and the entire amount was checked.

Q. Would that entire amount have been checked if the entire 3,000 pounds had not been delivered to the ship?

Mr. ALLEN.—Now, I submit, your Honor, he can't answer that. These records are made on board the ship, where they may have made errors.

The COURT.—Read the question.

Q. (Question read.)

A. Not complete in that form, no, sir. [1046—994]

EDWIN F. MEYER on the stand, direct examination (resumed).

By Mr. SHIPLEY.—If the Court please, I will try and so frame a general question that will do away with the necessity of detailed questions.

The COURT.—I will be glad if you do that; yes.

Mr. SHIPLEY.—Mr. Meyer, you have been examined concerning ship's requisitions for the use of the U. S. ships "St. Louis," "Colorado," "Washington," "Buffalo" and "Kearsarge." I will ask you, in addition to those requisitions which you have been examined as to, you have examined the requisition in evidence as exhibit "A-2" for U. S. ship "Pennsylvania," the ship's requisition for the U. S. ship "Rhode Island," which is in evidence as exhibit "A-3," the ship's requisition for the U. S. ship "Milwaukee," which is in evidence as exhibit "A-7," for the U. S. ship "Charleston," in evidence as ex-

(Testimony of Edwin F. Meyer.)

hibit "A-5," the ship's requisition for U. S. ship "Tennessee," in evidence as exhibit "A-8," the ship's requisition for the ship "New Jersey," in evidence as exhibit "A-11" and "A-9" and also the entries upon the stock card in evidence as Plaintiff's Exhibit "8," showing the delivery to the U. S. ships "Nebraska," "Princeton" and "Pennsylvania," for the purpose of ascertaining the total amount of zinc requisitioned for the use of those ships mentioned, commencing the month of October, 1907, and extending down and including the month of October, 1908.

A. I have, sir.

Q. State to the jury what the total amount of zinc requisitioned for by those several ships is, as shown on these various exhibits. [1047—995]

A. The aggregate amount as shown by those requisitions which are in evidence here would be over 90,000 pounds.

Mr. SCHLESINGER.—I didn't get that answer.

A. Over 90,000 pounds, as shown by those requisitions here.

Mr. SHIPLEY.—Mr. Meyer, in the exhibits to which you referred, do they include these ships' requisitions plus the allowance—the amount shown to have been withdrawn by three other ships?

A. Yes, sir.

Q. Concerning which there are no ship's requisitions? A. Yes, sir.

Q. Those ships were the "Nebraska," "Princeton" and "Pennsylvania"? A. Yes, sir.

Q. The officers of the Government have been un-

(Testimony of Edwin F. Meyer.)

able to furnish you those requisitions?

A. Yes, sir.

Mr. SHIPLEY.—And we are not questioning, your Honor, the desire of Mr. House, or the Government officials, to furnish these, because we concede they have been very kind, wherever we have requested things they have furnished them, but the fact is they have not furnished these?

A. Yes, sir.

Q. Mr. Meyer, I will ask you to state to the jury what the facts are as to whether or not any of these ships' requisitions for quantities in excess of 5,000 pounds of zinc had been filed in the General Storekeeper's Office prior to the preparation by you of requisition 438, upon which the indictment in this case is based for the purchase of 50,000 pounds of zinc?

Mr. ALLEN.—Are you asking him as to the Atlantic Battleship Squadron?

Mr. SHIPLEY.—Well, any of these ships' requisitions, wherever the evidence shows a requisition for amounts in excess of 5,000 [1048—996] pounds, whether they are the Pacific Fleet or Atlantic Fleet.

A. There are several requisitions, I think, for—

Q. Can you state to the jury what some of those calls for zinc were?

A. Well, "California," 6,000. I don't recall the—

Q. The fact is, these exhibits show a number of calls in excess of 5,000 pounds? A. Yes, sir.

Q. Some of them as high as 8,000?

(Testimony of Edwin F. Meyer.)

A. As high as 8,000. One ship, the "Milwaukee," 10,000 pounds.

Q. Did you have all those facts in your mind, with-
in your knowledge, at the time you prepared this
requisition for 50,000 pounds?

A. Yes, sir. I had some of them. The "Mil-
waukee," of course, was subsequent to the prepara-
tion of that requisition.

Q. I will ask you, Mr. Meyer, whether or not it
has been possible for the Government to bring into
court the stock card which was in use at the navy
yard prior to the stock card which is in evidence as
exhibit "8"?

A. I asked Mr. House for it, but he said it couldn't
be found over at the navy yard.

Q. That is Plaintiff's Exhibit "8" (showing card
to witness)? A. Yes, sir.

Q. Mr. Meyer, I wish you would state to the jury
the date of your arrest? A. April 8th, 1911.

Q. When was that with reference to the arrest of
Mr. Kettlewell?

A. It was ten or eleven days after, eleven or twelve
days after, I think it was.

Q. During that interim where were you?

A. The navy yard, General Storekeeper's Office.

Q. Mr. Meyer, at this time I desire to call your at-
tention to the [1049—997] testimony given by Mr.
Kettlewell on the witness-stand as a witness for the
Government in this case, as shown upon page 3 of
the typewritten record of his evidence, which was
furnished by the stenographer reporting the evidence

(Testimony of Edwin F. Meyer.)

in this case, and ask you if you heard the following from Mr. Kettlewell in this case. "Answer: I saw Mr. Meyer again, or rather he saw me in the Navy Pay Office along in December, I think it was, of 1907, and I called his attention to the fact that Goldberg had been getting a lot of business, but nothing had been done about it. He says, 'I will see Jimmie,' as he referred to Goldberg, 'and he will come over and see you about it and make it all right.' " Did you hear Mr. Kettlewell so testify before the jury in this case? A. I did, sir.

Q. Were the words "I will see Jimmie" used by Kettlewell as language which he claimed fell from your lips? A. Yes, sir, they were.

Q. Did such a conversation ever take place?

A. Absolutely no.

Mr. SHIPLEY.—You may take the witness.

On cross-examination by Mr. ALLEN said witness testified as follows:

Q. Mr. Meyer, what is your full name, please?

A. Edwin F. Meyer,

Q. How do you spell that last name?

A. M-e-y-e-r.

Q. Has that always been your name, Mr. Meyer?

Mr. MORRIS.—There is one question we want to ask him, Mr. Allen, please.

Mr. SHIPLEY.—Mr. Meyer, will you kindly state to the jury where you are employed at the present time, and have been the greater [1050—998] part of the time since the former trial in this court.

A. Employed with Dam Brothers, with offices in

(Testimony of Edwin F. Meyer.)

Eiler's Building, across the way here.

Q. In the expression Dam Brothers, state whether or not you refer to one of the witnesses who has appeared in court.

A. One of the brothers; yes, sir.

Mr. SHIPLEY.—You may take the witness.

Mr. ALLEN.—Mr. Meyer, was that always your name, Meyer?

A. Meyer was always my name, yes, sir.

Q. Was that name ever Fassemeier?

A. No, sir.

Q. Never was your name? A. No, sir.

Q. You have never changed your name?

A. No, sir.

Q. You never went under this name?

A. No, sir.

Q. Never on any occasion? A. No, sir.

Q. At no time? A. No, sir.

Q. Mr. Meyer, you began your services with the Government back in the year, I believe you stated, 1896 or 7; is that right?

Q. 1896? A. Yes, sir.

Q. Port Royal, in South Carolina, I believe you stated? A. Yes, sir.

Q. You served then continuously in the navy yard of the United States Government through a period from '96 down continuously until the time of your arrest in 1911, I believe; is that right?

A. Yes, sir. [1051—999]

Q. You had then a continuous training and service in the employ of the United States Government in

(Testimony of Edwin F. Meyer.)

the operation of all the different branches in a civilian way of the Navy Yard Office; is that true?

A. Yes, practically true.

Q. You have had, then, a thorough training covering about seventeen or eighteen years at the expense as an employee of the United States Government; that is right, isn't it?

A. Beg pardon, I didn't get the last part of that question.

Q. (Question repeated.)

A. I can't answer as to being at the expense of the Government. I received remuneration for service rendered.

Q. But when you went into the employ of the United States Government you naturally were not conversant with any business forms with which you have since become acquainted?

A. As is the case with all persons, but not at the expense of the Government.

Q. I didn't refer to any improper compensation, you understand; I was referring to the fact of your training in this particular branch of business. Mr. Meyer, after you came to the Puget Sound Navy Yard you served them in the office of the Storekeeper in the city of Bremerton under Mr. Kettlewell as Chief Clerk; isn't that true? A. Yes, sir.

Q. How long did you serve under Kettlewell as your superior in the office?

A. Until December 1st, 1906, I think it was he was transferred, sir.

Q. Through what period of time, then, did you

(Testimony of Edwin F. Meyer.)

serve under Mr. Kettlewell?

A. From 1902, August 10th, until 1906, the first of December, you [1052—1000] were employed as a subordinate to Mr. James A. Kettlewell, who appeared here on the witness-stand; is that true?

A. Yes, sir.

Q. You naturally became quite well acquainted with Mr. Kettlewell?

A. Very well acquainted; yes, sir.

Q. He was your superior officer and you served there with him in the same office for many years?

A. Yes, sir.

Q. That acquaintanceship which began so many years ago, Mr. Meyer, was quite close business as well as a personal relationship, was it not? A. It was.

Q. It was. And that continued down through the period of years, 1904, 5 and 6, and even after Mr. Kettlewell came across the Sound to the Navy Yard Office here, isn't that true, or the Navy Pay Office here? A. Yes, sir.

Q. Those relations were close and personal and friendly, were they not?

A. Yes, sir, broken at times, at intervals.

Q. Broken at times. But even as late as the years 1908, 9 or '10, you were even then in somewhat close relations with Mr. Kettlewell, were you not?

A. Yes, sir.

Q. Upon what occasions and at what times were your relations with Mr. Kettlewell, personal relations with him, ever broken, and for what purpose?

A. Well, at intervals before he left the navy yard

(Testimony of Edwin F. Meyer.)

he owed me some money which he did not pay—

Q. I understand that episode. You referred to it in your direct [1053—1001] examination.

A. Well, you asked me to state—

Mr. MORRIS.—He asked this witness to answer a question.

The COURT.—Let him answer.

A. That was principally the cause; and sometimes some little official matter would occur that would—

Mr. ALLEN.—But this matter of nineteen hundred, this note you referred to of 1902 or 3, that did not disturb—or what was the date of the note?

A. Well, shortly after I came here, sometime in 1902.

Q. At any rate, that note episode, which may have been, according to your version, the disturbing factor—

Mr. ALLEN.—This episode of the note way back in 1902, disturbing as it may have been at the time, according to your version of it, didn't break or jar or terminate the close personal relations between yourself and Kettlewell, did it?

A. As I said, at intervals it came up, but it continued—

Q. Please answer the question. This episode of the note away back in 1902, whatever disturbing factor it may have been at that time, didn't, as a matter of fact, affect later your tranquil close relations with Mr. Kettlewell, did it?

A. You said terminate it. Well, it didn't terminate it, but, I say, there were intervals even up

(Testimony of Edwin F. Meyer.)

till 1908 when it was broken temporarily.

Q. Do you mean to say this note episode is a disturbing factor that runs through 1902 and 3 and 4 and 5, clear down to 1910 or '11?

A. It would cause a broken, strained relation at intervals during that time.

Q. It did? A. Yes, sir. [1054—1002]

Q. This same episode, then, is the cause of these temporary breaks, this note episode?

A. Practically, yes, sir.

Q. Well, then, Mr. Meyer, if that was the cause of any disturbance in your mind, why was it, as late as 1910 and '11, at that time you were going into a business deal, inviting Mr. Kettlewell to go into a business deal with you in regard to a deal over in the Priest Rapids Company?

A. I said at intervals this would come up, but you understand the relation continued at periods.

Q. It wasn't disturbing your mind, then, as late as the year 1910 in April, was it, Mr. Meyer?

A. Well, it may—

Q. Take a look at that letter (handing paper to witness). A. Yes, sir, that is my letter.

Q. That is your letter? A. Yes, sir.

Q. And that is addressed to—

A. Mr. Kettlewell.

Q. I ask that be identified. That is your letter and that is your initial "M" with the cross across it.

A. Yes, sir.

Q. Very commonly sign your name that way, don't you, Mr. Meyer?

(Testimony of Edwin F. Meyer.)

A. Well, that is the sign I used generally.

Q. If you were writing to a close, personal friend, you would probably sign it in that way, would you not?

A. Well, that was the way I used it in the office.

Q. You knew perfectly well that Kettlewell would know from whom that letter came, didn't you?
[1055—1003]

A. Yes, sir. All of the official documents were initialed by me in that manner, "M."

Mr. ALLEN.—We offer this in evidence, your Honor. This is a letter of April 18th, 1910, Plaintiff's Exhibit Number "86," offered for identification.

Mr. MORRIS.—We object to it on the ground it is irrelevant and immaterial. It does not prove or disprove, or throw any light upon the issues involved in this transaction.

The COURT.—What is the purpose of that letter?

Mr. ALLEN.—The purpose of this, your Honor, is to show the fact of the continuing close relations existing from 1904 or 5 between this man and Mr. Kettlewell.

The COURT.—Simply to show the relationship between parties?

Mr. ALLEN.—Yes, sir. This covers the latter part of 1910.

Mr. SCHLESINGER.—On behalf of the defendant, Mr. Goldberg, we object to the introduction of this letter in evidence upon the ground it is long subsequent to the termination of the alleged con-

(Testimony of Edwin F. Meyer.)

spiracy. It is not binding upon him, and in no wise relates to any of the issues involved in this indictment. I haven't even taken the time to read it, but the date is April 18th, 1910. Now, how that can be relative to an indictment that charges an offense with having terminated on June 1st, 1908, I cannot conceive.

The COURT.—The Court has admitted exhibits here on the part of the defendants up as late as the last part of 1910, and that is simply for a certain purpose, and that can be only construed for the purpose of possibly showing relationship between the parties as affecting the credibility of the witness now.

Mr. SCHLESINGER.—What difference would it make what the relation was in 1910? [1056—1004]

The COURT.—I say, as a matter affecting the credibility of the witness with relation to the relationship between himself and Kettlewell.

Mr. SCHLESINGER.—We take an exception, your Honor.

The COURT.—Noted.

Mr. ALLEN.—This is a letter of April 18th, 1910, addressed to Mr. Kettlewell on the letterhead of the Navy Yard, Puget Sound, Washington.

(Letter referred to received in evidence and marked Plaintiff's Exhibit "86." Reading same to jury.)

The COURT.—This, gentlemen of the jury, is admitted only for the purpose of affecting the credibility of this witness with relation to the relations

(Testimony of Edwin F. Meyer.)

existing between him and Kettlewell as testified to, and a possible relationship between the defendant and Kettlewell.

Mr. ALLEN.—If there were any disturbing factors between you and Mr. Kettlewell beginning back even in 1902 or 3, they were sufficiently allayed, so in 1910 you were trying to get Mr. Kettlewell in on this proposition, were you not?

A. No; as I stated before, the relations were broken at intervals, and, of course, they continued until the time of my arrest; but they were broken at intervals.

Q. They were not broken at this time?

A. Not at that particular time, no, sir. And I would like to explain that proposition.

Q. Well, you can tell me any particular time—

Mr. ALLEN.—Mr. Meyer, can you place your finger on any particular time or interval when these kindly, friendly relations were broken, as a matter of fact, some particular month or year, or [1057—1005] something of that sort?

A. Well, I know it was broken for some time shortly before he left the navy yard in 1906, and there were short periods—

Q. Well, designate the short periods; that is what I want.

Q. I don't remember. Some circumstance in connection with the affairs. He is quite ill-tempered at times.

Q. They were matters, then, so light that at this time you can't tell the jury any particular time when

(Testimony of Edwin F. Meyer.)

there was a period, can you?

A. Except I know there was a period for a long time during 1906.

Q. But you can't designate now any particular time when you say you were on unfriendly terms with Mr. Kettlewell or for any particular period of time, can you?

A. Not a great while. We were thrown in contact in a business way, and it was necessary to have intercourse with him in a manner, and naturally any feeling would be eradicated through this business contact.

Q. But you can't pick out any particular time for this jury and tell them?

A. Not after 1906, no, sir.

Q. No. A. No, sir.

Q. Mr. Meyer, you lived for what length of time in the home of Mr. and Mrs. Coombes?

A. A few months—five or six months; I don't remember.

Q. And your relations there were sufficiently close; you all lived in the same rather small dwelling.

A. Small dwelling. I had a room there.

Q. They had a phone in the house?

A. Had a phone in the kitchen; yes, sir. [1058—1006]

Q. When you went to Bremerton in 1906, as I understand it, you lived then in Bremerton continuously how long?

A. I didn't go to Bremerton in 1906, sir.

Q. When did you first move to Bremerton, then?

(Testimony of Edwin F. Meyer.)

Maybe I have the wrong date. A. From Seattle?

Q. Yes, sir.

A. I moved to Bremerton first in 1902, but I came over here afterward and moved back with my wife in 1907—beg pardon—1907, yes, sir, 1907.

Q. I understood you to say in your direct examination that it was 1906 that you moved back there, but I am probably mistaken. A. No, sir.

Q. You moved back there with your wife in 1907?

A. 1907, the latter part of September or first part of October.

Q. Is that when the baby was born?

A. The baby was born in September of that year.

Q. Wasn't there a child born soon after you left the Coombes home?

A. About that time there was a baby born, yes, sir.

Q. You had two children born in successive years?

A. Yes, sir.

Q. I was confused as to that. A. Yes, sir.

Q. Mr. Meyer, you found it possible, living in the city of Seattle, for some time, and even years, to be attached to the Bremerton Navy Yard, living in Seattle, to go over there and perform your duties and do a full day's work and return to the city of Seattle in the evening; isn't that true?

A. Quite a number of years, yes, sir.

Q. In fact, a great number of the employees of the navy yard do that very thing; isn't that true?

[1059—1007] A. Yes, sir.

Q. Then you went over to Bremerton in the fall of 1907. Now, you had been living there about a month

(Testimony of Edwin F. Meyer.)

when Mr. Spear came on the job as Paymaster of the navy yard? A. Oh, several months.

Q. Several months. He came there about the first or second of January, I believe, in 1908?

A. Yes, sir.

Q. During the period from the first or second of January down till the first of April, 1908, did you or did you not, on several occasions, somewhat numerous, as a matter of fact, obtain from Mr. Spear permission to leave your work at the navy yard in Bremerton, giving to him the ostensible reason you wanted to come to Seattle on private business, and remained here during the entire afternoon and evening? A. Oh, I may have on a few occasions.

Q. Well, didn't you on quite a number of occasions, now, refreshing your recollection?

A. Well, possibly later on. My wife was sick during the early part of that year.

Q. Now, Mr. Meyer, I particularly picked out the period of time. I am asking you from January first down till the first day of April, 1908, did or did you not, on different occasions, somewhat numerous in number, request of Mr. Spear, your superior officer, for permission to leave your duty at the navy yard and proceed to Seattle on personal and private business of your own; did you or did you not?

A. I wouldn't say on numerous occasions, no, sir; I did on a few occasions.

Q. On a few occasions? A. Yes, sir. [1060—1008]

Q. How many occasions, then, would you estimate?

(Testimony of Edwin F. Meyer.)

A. Why, that has been five years ago; I don't know.

Q. Well, give us your best recollection.

A. I don't suppose it is more than half a dozen occasions during that period.

Q. But you did, on at least a half a dozen occasions, obtain permission from Mr. Spear, your superior officer, and come to Seattle on business peculiar to your own private affairs; is that right?

A. Yes, I guess it was private business.

Q. Yes, you did that thing? A. Yes, sir.

Q. Then if you did that thing on any one of those evenings you could as well as not called at the office of Mr. Kettlewell in the city of Seattle, could you not? A. I could have, yes, sir.

Q. Were you ever on any occasion in the office of Mr. Kettlewell, in the Navy Pay Office in this city, in the evening when there were other people present in that office? A. Yes, sir.

Q. You have been there? A. Yes, sir.

Q. You have been there on occasions when the two clerks in the office were there?

A. Yes, sir, I met the Paymaster there sometimes.

Q. And you met Mr. Kettlewell there on more occasions, didn't you? A. No, sir.

Q. As a matter of fact, haven't you been up there on a number of occasions when Kettlewell was there and the Paymaster himself was not there? [1061—1009]

A. I don't remember having been there when he was there alone.

(Testimony of Edwin F. Meyer.)

Q. I asked you when the clerks were there?

A. Yes, sir. I would like to explain that.

Q. No, you answer the question.

A. During the latter part of March, or the first of April, my wife went east, and I came over here to live. It was about that time that numerous requisitions were being prepared for the battleship fleet. Mr. Kettlewell wished me to come up occasionally after March 31st, about April 1st, for the purpose of going over these requisitions with him. They were prepared in large number, and there were quite a number of items on it, and some of them he did not understand, and it was after that time that I went up there. My family was east and I was living over here, and I occasionally went up to the office, and I found that the clerk and all were busy working over time there.

Mr. ALLEN.—In Mr. Kettlewell's office?

A. In Mr. Kettlewell's office; yes, sir.

Q. So when you tried to leave the impression, if you did try to do so, with this jury the other day that you didn't call on Kettlewell in his office in the evening, you are mistaken about that? A. No, sir.

Mr. ALLEN.—So your relations with Kettlewell along about this time were quite friendly, were they not?

A. No, sir, I wouldn't say quite friendly. They were relations that would exist between two people in different offices; they were friendly, yes.

Q. Yes, they were friendly on that day.

A. I wouldn't say quite friendly. I might add we

(Testimony of Edwin F. Meyer.)

were both working for the same end, the supplying of those ships. [1062—1010]

Q. Now, during this time, commencing way back in December, down to 1907, down to April 1st, 1908, there was a frequent and continuous boat schedule in effect between the city of Seattle and the city of Bremerton, was there not? A. There was; yes.

Q. And a man could go back and forth without any great inconvenience to himself at all times; isn't that true?

A. Except in the evenings, yes, sir.

Q. Except in the evenings. You mean to say after six or seven o'clock a man couldn't get back to Bremerton?

A. I think the last boat would leave here at 4:30.

Q. But during the day there were numerous boats back and forth? A. Yes, sir.

Q. And if you then were in Kettlewell's office in the evening, you had to stay over in the city?

A. I had to stay over that night, yes, sir.

Q. Now, Mr. Meyer, your counsel examined probably a half day in different directions along different lines with reference to requisitions in the history of the yard. I am not going to take more than about fifteen or twenty minutes on them to cover the same ground. I will ask you if this isn't a fact, that prior to the time which you fix as approximately December 1st, 1907, that prior to that time the different Bureaus in the yard did prepare requisitions for supplies which they in their particular department needed; is that true?

(Testimony of Edwin F. Meyer.)

A. Yes, sir; they prepared requisitions.

Q. Yes, sir, prior to 1907. After 1907, in December, or on the first of January at least, 1908, and after that time, from the time Mr. Spear was personally present there in the yard, was it not a fact that any Bureau or department in the yard which [1063—1011] needed supplies would first direct the inquiry to the office of Mr. Spear and yourself as to whether you had those supplies on hand?

A. Yes, that is true, partly.

Q. That is true partly. As a matter of fact, isn't it true as an absolute rule of the yard there, the entire yard? A. No, sir.

Q. Do you mean to say and tell this jury with the two million stock of goods lying there, that any one of these Bureaus, contrary to a rule existing in the office, would make a requisition for material without first inquiring of the Storekeeper whether or not he had that material on hand?

A. Well, you said the Storekeeper or myself. They would send their representatives to the various storehouses in the navy yard and inquire from the storemen whether these things were there, and would proceed thereafter to prepare the requisitions. The requisitions would lodge—

Q. Very nice, Mr. Meyer.

Mr. MORRIS.—You may finish your answer.

A. (Continuing.) No, sir, they did not apply to the Storekeeper's Office for it in the sense that I think you mean the word. They would go to the storemen around the navy yard for them.

(Testimony of Edwin F. Meyer.)

Q. We will get that clear in a moment. Did not these different departments, after January 1st, 1908, when Mr. Spear came on the job, did they not, as a matter of custom and rule in that yard, either phone or communicate with the office of which you were then Principal Clerk, and ask you in every case whether or not that material was in the yard before they would make the requisition?

A. I would have to inquire from the various storemen and then [1064—1012] transmit the message to them. It would be—it would save time for them to go direct to the storemen.

Q. You haven't yet answered my question.

A. No, sir, they did not.

Q. You mean to say these different departments did not then communicate to your office by phone, more by phone than any other way in the world, and ask you whether or not your Storekeeper's Office had on hand certain material, after January 1st, 1908, that they didn't do that?

A. Well, very frequently they did, but in most instances the first information I would have would be the receipt of the requisition itself.

Q. Very frequently they did phone to you, then?

A. Yes, sir.

Q. You want to qualify your former answer?

A. No, sir, I don't want to qualify it; I didn't say they did not.

Q. As a matter of fact, Mr. Meyer, didn't they phone to you, to your office, either Mr. Spear or yourself, or some other employee of the pay office there

(Testimony of Edwin F. Meyer.)

answering the phone, wouldn't they invariably, if they needed material in any of these departments, phone over and inquire of your department as to whether they had that stock on hand?

A. They did frequently. In most instances I think they went directly to the storehouse where the stock was kept; that would be the source of supply.

Q. When they could go to the head office, without trotting around to half a dozen or a dozen buildings in the yard, and find out by mere inquiry of your office whether you had it on hand, why would they be going to these different buildings to ascertain it?

A. They wouldn't have to trot around; they could use the phone [1065—1013] to these different places just as readily as they could to the office.

Q. You knew and they knew you were charged with the responsibility of having material on hand for these different departments?

A. I wouldn't know at any time what material was on hand. The storemen would have that information.

Q. Wasn't that one of your offices as requisition clerk for that yard, to which you have testified very fully and very freely?

A. The stock was kept in a number of places. They have responsible men in charge of these warehouses. A man wanting material would go to the warehouse to inquire, or call up the warehouse to inquire whether or not this material was there, and not the central office where the papers relative to the purchase were kept. I had no particular means of know-

(Testimony of Edwin F. Meyer.)

ing at any time what material was on hand at the warehouse, except by inquiry from those people.

Q. Do you mean to tell this jury you couldn't go, by looking at your book, your regular ledgers there, and tell in a few seconds as to whether or not your books showed a supply of zinc, we will say, for the purpose of illustration, on hand in the yard?

A. Those books were kept in the bookkeeping office, which was apart from my office. I didn't use that. It would be necessary for me to go into the bookkeeping offices to get that information, which I never did.

Q. Which you never did?

A. For these people.

Mr. ALLEN.—Do I understand they did not or did they, a part of the time, or what percentage of the time did they phone to you in regard to those matters? [1066—1014]

A. I couldn't say as to the per cent of the time, because I would then have to reckon with the time they phoned other people. I know they did phone me several times, or quite a number of times, but it would be necessary for me to get the information from other sources, and if the foreman, or any one of them, would inquire of me, I would tell them to call up such and such a place; if an officer would call I would hesitate to do that and get the information for him.

Q. Isn't it a fact, Mr. Meyer, they would phone to you and ask you if you had the material. If you told them you didn't have the material they would

(Testimony of Edwin F. Meyer.)

ask you and question you as to the estimated cost of that material? A. No, sir.

Q. They never would do that?

A. They did on some occasions, but you are placing that as an absolute fact. They did at some times. What is the probable costs of such and such material, if I had a record of it.

Q. Weren't you the only man on that yard that had been furnished by the United States Government with facilities in the way of books and accounts and the like showing the cost of former purchases by the yard, weren't you the only man in the United States Navy Yard at Bremerton that had that information? A. Absolutely no, sir.

Q. What other people had?

A. The various requisition officers of the various yard departments had that information.

Q. As a matter of fact, hadn't the Storekeeper who is charged with the responsibility of accumulating these vast quantities of supplies, didn't you have there these indexes, as testified to by your own bookkeeper, the indexes within 12 or 15 feet of you [1067—1015] that showed the supply and quantity of every article that you had in the Storekeeper's Office? A. The books showed that; yes, sir.

Q. The books showed that? A. Yes, sir.

Q. And they were kept on this occasion within 12 or 15 feet from your desk; isn't that true?

A. Yes, sir.

Q. If the foreman in some yard wished an engine, or some piece of material of that kind, or if he wished

(Testimony of Edwin F. Meyer.)

a valve of a certain size, he wasn't as familiar with the place in the Storekeeper's warehouse where that material would be kept as you would be in your office; isn't that true?

A. I think they were as familiar as I was, yes, sir.

Q. You think they were? A. Yes.

Q. You think that every department in every part of that big yard knew as thoroughly as you did in your office in which one of these numerous warehouses you kept this material?

A. That wasn't the question you asked me.

Q. Well, I ask you the question now.

A. Well, everyone did not, but the foreman did.

Q. The foreman did, everyone did not?

A. Yes, sir.

Q. So if this man didn't happen to know he would make the inquiry of your office, wouldn't he?

A. Yes, sir.

Q. And if he didn't know he would quite naturally inquire of your office as to the estimated cost of getting that article, if he didn't have it?

A. No, sir, he would not. He would make a call on the requisition [1068—1016] office under the department in which he was connected.

Q. You are trying to lead this jury to believe that even after January 1st, when Mr. Spear came on the yard, that it was the custom of these different departments of the yard to fix the value of the estimate on these requisitions which came through your office?

A. The requisitions that were submitted to the

(Testimony of Edwin F. Meyer.)

General Storekeeper's Office at all times, having been prepared in the respective yard departments, came to the office complete with the estimate and everything else on it.

Q. And do you mean to tell this jury now, as a matter of fact, that estimate was not, in more cases than to the contrary, prepared after conference with you over the phone, by some person in the yard asking you relative to those prices?

A. They did not often confer with me relative to prices.

Q. They didn't often confer with you?

A. No, sir.

Q. They did sometimes, though?

A. They did at times, yes, sir, but not often.

Q. Mr. Meyer, wasn't it a matter of complaint, when Mr. Spear came to the office, that you were carrying a great deal of this matter in your head, isn't that true—isn't that the reason for the card system which followed?

A. Not a matter of complaint. I complained about the lack of help there, and it was necessary to carry it. There was no one to do it; I was forced—

Q. Didn't Mr. Spear tell you if you died that information wasn't available to anybody else with regard to these figures? A. I don't recall that.

Q. Or words to that effect. [1069—1017]

A. I don't recall that.

Q. Or words to that effect?

A. I don't recall anything like that. I knew just as soon as I was relieved from these multifarious

(Testimony of Edwin F. Meyer.)

duties I began the installation of that card system.

Q. Mr. Barnes was responsible for that card system, wasn't he, now, as a matter of fact?

A. No, sir.

Q. Anyway, it came there after Mr. Barnes got there?

A. Well, because I was relieved from this work, from these duties at that time.

Q. Now, Mr. Meyer, after Mr. Spear arrived on the yard there was in use there rules in your office, his office, governing every clerk in the office, including yourself, that any matter of a particular importance which was to be brought to his personal attention, or which required his personal attention, should have a memorandum or little slip attached with a note to that effect, was there not?

A. I know of no rule to that effect. I did it before he came there and I did it after he came there.

Q. That was a custom, then, before and after he came on the yard?

A. That was the custom before and after he came there.

Q. It was followed, then, down through Mr. Spear's experience there until the red card system was adopted; is that true? A. Yes, sir.

Q. Then from 1908 down to, well, we will say, down to the latter part of the same year, there was this white slip in vogue? A. Yes, sir.

Q. And later they inaugurated the red system?

A. Yes, sir. [1070—1018]

Q. All requisitions for stock, Mr. Meyer, were

(Testimony of Edwin F. Meyer.)

prepared in the office of the General Storekeeper; is that right? A. No, sir.

Q. Substantially all, or practically every requisition for stock, for articles known as stock articles, were instituted and prepared in your office; isn't that true? A. No, sir.

Q. It isn't true? A: No, sir.

Q. What percentage of the cases, then, was that not true?

A. Well, very frequently the yard departments would want material for various jobs in anticipation or for some already authorized job. They would prepare these requisitions; they would prepare it for more than they actually wanted and would submit it to the Storekeeper.

Mr. ALLEN.—The Storekeeper's yard and office and buildings had accumulated there stock of value of something over a million dollars, had they not, Mr. Meyer, at this time?

A. About that time I think there was.

Q. Just about that time?

A. I think probably about a million.

Q. Pig iron, lead, bronze, or the hundreds, as you have stated, 25,000 articles, or possibly more than that, were articles which were continuously kept in the buildings controlled by the Storekeeper, were they not?

A. In the buildings, yes, sir. Sometimes in the open.

Q. Those were catalogued and were known as stock articles; isn't that true? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Then as regards the stock articles, this particular kind to which I refer, which would include zinc plate, Mr. Meyer, I [1071—1019] believe, as regards those stock articles there kept in the yard, was it not your duty as requisition clerk under Mr. Spear to keep that stock up, and for all deliveries to be made, or increases to be made in the articles, you were expected to prepare the requisitions?

A. Yes, sir.

Q. That is true?

A. That is true, with some exceptions.

Q. But that is substantially true?

A. Substantially true, yes, sir.

Q. Zinc plates 12 by 6 by 1½ inch is a stock article, isn't it? A. It is a stock article.

Q. Now, there was a great deal said by you in regard to the preparation of these requisitions. You were the officer, subordinate officer to Mr. Spear, charged with the responsibility of either personally preparing, or seeing that they were properly prepared, every requisition that went out of there for stock articles; is that true?

A. Yes, sir, that is substantially true.

Q. As a matter of practice in your office, Mr. Meyer, I will ask you whether you did not personally prepare with your own hands, running it off on the typewriter, many of these requisitions for stock articles?

A. At what period are you referring to now?

Q. Commencing at January 1st, 1908, down through the spring and summer, and, say, to the

(Testimony of Edwin F. Meyer.)

first of August?

A. I did prepare a few, yes, sir; I think very few.

Q. You think very few.

Q. As a matter of fact, didn't you prepare a great number of them personally?

A. No, I don't think I did, sir. [1072—1020]

Q. You don't think you did?

A. I had too much other work to do.

Q. You had too much other work to do. When you did not personally prepare them with your own hands upon the machine, I will ask you whether it isn't true that you would take a blank form of the requisition, such as we have had many here in evidence, and, with a pencil, write out the figures and the amounts, and all the data necessary for use on that requisition, and then personally hand it to Mr. Dam, or whoever your assistant might have been at your right or left?

A. I did in some instances, yes, sir.

Q. Well, that is a very general statement. Well, as a matter of fact, didn't you do that in practically every instance except those where you handed them personally yourself?

A. No, sir, I did not. I prepared a little slip, but not a copy of the requisition. It was on the form of a little memorandum or slip. I think several of them were seen here the other day.

Q. Do I understand you would either personally prepare these requisitions or you would prepare on a little slip, or occasionally perhaps use the form of requisition itself, would that be the system?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, and sometimes I would tell the clerk to do it, if it happened to be convenient.

Q. Then if you did not prepare them yourself. if they were prepared by this subordinate under you and by him filed out, they were then returned to your desk and inspected by you before they went to the desk of Mr. Spear; is that right? A. Yes, sir.

Q. In other words, you furnished the data and the information for these requisitions; isn't that true? [1073—1021]

A. Yes, sir, substantially; it came through me.

Q. Well, you would supply, then, the amount of the material which you wanted, the pounds and the like, you would supply as well the date of delivery which you proposed, and you would supply, then, as well the estimated cost; is that true?

A. In most instances, yes, sir.

Q. In most instances that is true? A. Yes, sir.

Q. Then when this matter came back to your desk you would go over these requisitions to see they were properly filled out in form and the like; is that true? A. Substantially true.

Q. Substantially true?

A. Of course, if I were to check over every item of his work it would require as much time to do that as it would the actual preparation of the papers. I would only give it a casual inspection, that is, to see it was in proper form.

Q. You were responsible for it, weren't you?

A. So was the clerk who prepared it.

Q. But you were the responsible officer, you were

(Testimony of Edwin F. Meyer.)

the responsible party, you furnished the amount, the total number to be purchased and the like, weren't you a responsible officer?

A. Following the same out, you might say the man who prepared it was responsible, also responsible the Storekeeper and the Bureau and the Secretary of the Navy.

Q. But you were the man who stated to this jury you furnished the number of pounds, you furnished the number of days, you furnished the estimated price, didn't you, to this clerk?

A. In many instances I did, yes, sir, in a great number of instances.

Q. That was your duty, wasn't it, as requisition clerk, Mr. Meyer, [1074—1022] to do that thing?

A. I was not requisition clerk at that time; I performed the work of requisition clerk.

Q. All right, we will make that distinction. You prepared the work of the requisition clerk at that time? A. Yes, sir.

Q. And the work of the requisition clerk required him to do that thing; isn't that true?

A. Yes, sir.

Q. So whether the requisition was prepared by you personally, or whether it was written on a memorandum sheet or paper and actually and physically written by someone else, it would then come back to your office for inspection? A. Yes, sir.

Q. And then if you found it correct it went to the desk of Mr. Spear; is that right? A. Yes, sir.

Q. A great deal has been said, Mr. Meyer, with

(Testimony of Edwin F. Meyer.)

reference to the custom of inspection and the practice of inspection in this yard. When any material was delivered at the wharf of the navy yard at Bremerton, what was the next step down after it was landed upon the wharf?

A. Well, the next step, in the ordinary course of business, would be to have it moved, have the material moved to where it was required in the navy yard. If the material was an emergency it was very frequently inspected on the wharf; if not, it was taken up into the various buildings of the navy yard, wherever the material was to be stored, and there held for inspection. If it was small articles it would be taken up and inspected in the inspection room. We had a room, or part of the storehouse [1075—1023] reserved for inspection.

Q. A great deal, Mr. Meyer, has been said about this Inspection Call. From what point did the Inspection call originate?

A. In the requisition office by the Inspection Call Clerk.

Q. In the requisition office? A. Yes, sir.

Q. Didn't it, as a matter of fact, the Inspection Call, didn't you notify them the material was there and the Inspection Call came from your department?

A. That is exactly what I said, sir, the requisition office.

Q. There is a requisition office somewhere, I understand? A. In the Storekeeper's Office.

Q. There is another requisition office somewhere?

(Testimony of Edwin F. Meyer.)

A. Requisition offices at that time in all of the yard departments.

Q. Well, in other words, there originated, then, out of your hands, after the materials were landed on the dock there, an Inspection Call to inspect that material; isn't that true?

A. By the Inspection Call Clerk it was prepared. We have a clerk called the Inspection Call Clerk.

Q. As a matter of fact, that man was working directly under you, wasn't that true?

A. Yes; yes, as all clerks in the office.

Q. Well, he was working directly under you and whatever was done in the matter you knew it, as a matter of fact?

A. Well, generally I knew. I knew what his work was, that he should prepare it in form, but as far as the various numerous departments, it was simply a matter of routine.

Q. Mr. Meyer, when this Inspection Call went out, it required, then, the services of two commissioned officers of the United States Navy and one of the non-commissioned officers of the [1076—1024] yard; isn't that true?

A. Well, that was a Board of Inspection as it was constituted.

Q. Mr. Meyer, state to the jury how many commissioned officers were in the service, if you know, at the United States Navy Yard in the spring of 1908?

A. Well, there were commissioned officers in charge of the various departments.

(Testimony of Edwin F. Meyer.)

Q. About ten or twelve, weren't there, as a matter of fact?

A. I don't think there were as many as that.

Q. You don't think there were so many as that?

A. No, sir, I don't think there were as many as that.

Q. How many employees of all kinds were there in the yard about this time?

A. Quite a large number, I think.

Q. 1500? A. Maybe 2,000.

Q. 1500 to 2,000? A. Yes, sir.

Q. Then these different commissioned officers who are charged with the primary responsibility of conducting that yard, had, each one of them, practically some department under his control, didn't he?

A. Yes, sir.

Q. Each of these men, who was a busy man, was he not, he had numerous duties to perform?

A. Should have been.

Q. Well, as a matter of fact, their duties were such they were busy men; isn't that true?

A. I can't say they were; I think they really ought to have been.

Q. So, as a matter of fact, upon these so-called Inspection Calls, [1077—1025] upon which two officers' names would appear, there was a subordinate, as a matter of fact. And tell the jury, isn't it the truth and isn't it the fact that this Inspection Call, calling for two senior officers and one subordinate officer, it generally resolved itself down to the fact of the subordinate officer walking over and looking

(Testimony of Edwin F. Meyer.)

at the material, possibly personally checking it to see that it weighed out as regards the requisition, and examining it as to quality, and then coming back and reporting that fact to you; isn't that true?

A. No, sir, they never came back and reported the fact to me.

Q. As a matter of fact, isn't that the way it was generally done in the yard?

A. Of course, you have the written regulations here.

Q. Now, pardon me; I am not asking you about the regulations, I am asking you about the practice of this yard.

A. I can tell you from my observation what I thought went on, what I saw.

Q. Isn't what you saw what I have just described to the jury?

A. Just a second, sir. The Inspection Call, all these Inspection Calls would be sent from our office to the office of the Board of Inspection. The Inspection Call Clerk over in that office would give those calls to some of these junior officers that you have mentioned for the purpose of having him perform the inspection. He would take with him some of the foremen in the navy yard and they would perform the inspection. The—

A. (Continuing.) The Board thereafter took all of these papers together and would walk around the navy yard to the various places where the stuff was, and looked it over and then took the papers to the

(Testimony of Edwin F. Meyer.)

office and filled them out, whatever the quantity was.
[1078—1026]

Q. The responsibility, Mr. Meyer, of really checking this up, then, due to the crowded conditions of the yard, was chiefly reposed upon a subordinate officer who was not a commissioned officer?

A. He was a warrant officer, yes, sir. I am giving you merely my opinion of it.

Q. Your observation, yes, that is all I want.

A. Yes, my observation.

Q. We are not criticizing them; that is a bad condition there—

A. The regulation provided afterwards—

Q. But that was the condition prevailing there and necessary under the circumstances apparently. The Inspection Board, then, passed upon two things. Isn't it a fact that this Inspection Board had nothing whatever to do with the price of the article?

A. Absolutely nothing, sir.

Q. Absolutely nothing. This Inspection Board, then, would simply do two things, they would pass upon the quantity or weight of the article, and they would pass upon the quality according to specifications, isn't that true?

A. That is their function, yes, sir.

Q. That is their function. They weren't supposed to check up in any way the cost or value of the thing purchased, isn't that true?

A. No, sir, they were not supposed to do it.

Q. They were not supposed to do it, and they didn't do it, as a matter of custom or practice, did they?

(Testimony of Edwin F. Meyer.)

A. No, I only know of one or two instances where the attention was called to it.

Q. Something so flagrant they often protested, is that right? A. Yes, sir.

Q. Mr. Meyer, a great number of requisitions have been brought in [1079—1027] here, some of which you have testified that you did or did not personally prepare? A. Yes, sir.

Q. I will call your attention to this bunch I hold in my hand.

The COURT.—Are they identified?

Mr. ALLEN.—They are all in evidence, your Honor.

The COURT.—Well, call his attention to the exhibit.

Mr. ALLEN.—Well, if he will just mention each one and ascertain and declare whether or not in that particular instance you personally prepared that particular requisition. Call the number of it and tell me whether you did or not.

A. This is exhibit number 75.

Q. What is the fact?

A. 58 N. S. F., September 4, 1907.

Mr. MORRIS.—Is “75” the exhibit number?

A. Yes, sir.

Mr. ALLEN.—Did you personally prepare that?

A. No, sir.

Q. Do you recall the preparation of it?

A. No, sir. I don’t recall the preparation of it. I know it wasn’t prepared in my office either, that is, not in the Storekeeper’s Office.

(Testimony of Edwin F. Meyer.)

Q. That wasn't prepared in the Storekeeper's Office? A. No, sir.

Q. You are not prepared to say whether you furnished the data upon which it was prepared?

A. I know I did not furnish it.

Q. How do you come to remember that so well?

A. Because those people didn't get information from us; they had a requisition office more complete than our office. [1080—1028]

Q. You are prepared to say this is not one of the occasions they phoned you, or came to see you?

A. No, sir.

Q. Are you prepared to say they didn't on this occasion?

A. As a rule, they got more information than we did.

Q. I am not talking about the rule; I am talking about that particular requisition.

A. I am not prepared to say; I would not swear absolutely they did not, but I don't believe they did.

Q. Take the next one and tell me about that.

A. The next is "78," exhibit "78." That is November 15th, 1907, requisition 153.

Q. Did you or did you not personally prepare that one?

A. That requisition was prepared in my office.

Q. Prepared in your office?

A. Yes, sir. I did not personally prepare it; I furnished the information.

Q. You furnished the information, including the estimate, as to the amount and the estimated price?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, I did.

Q. You furnished that information?

A. Yes, sir.

Q. So you are responsible for that, aren't you?

A. Yes, sir.

Q. Take a look at the next one.

A. The next is exhibit "69."

Q. Exhibit "69"? A. Requisition 169.

Q. Did you personally prepare that one?

A. Well, I don't know whether I personally prepared that or not. [1081—1029]

Q. What is your best recollection?

A. My best recollection is probably some one of the clerks in the office under my supervision.

Q. Your best recollection is, then, you didn't personally do it? A. Yes.

Q. That you did not personally do it?

A. Well, my best recollection is I may or may not have; I don't know; I can't tell from the face of the requisition whether I did or not.

Q. I am asking you about your memory with regard to it and the like?

A. I have no memory as to that, at least as to whether it was prepared by some one of the assistants or myself. I know it was prepared in my office.

Q. You have no personal recollection, then, of personally preparing it? A. No, sir.

Q. You have no personal recollection, then, of having somebody else prepare it; is that the idea?

A. No personal recollection, no, but I must have had some one—

(Testimony of Edwin F. Meyer.)

Q. I am asking you about your memory.

Mr. SHIPLEY.—Let him explain his answer.

A. I have no personal recollection, no, sir.

Mr. ALLEN.—Do you have a personal recollection of the fact you did furnish the estimate as to price and number of pounds?

A. Well, I may have.

Q. Well, did or did you not?

A. I have no personal recollection of that fact.

Q. One way or the other?

A. No, sir. I think probably I did, because it was prepared under my supervision.

Q. I think probably you did, yes. [1082—1030]

Mr. ALLEN.—What is the next one?

A. Exhibits "19" and "20," requisition 359 N. S. F., March 6th, 1908.

Q. Did you or did you not personally prepare that requisition?

A. I will examine this and see whether there is any memorandum here. I have no personal recollection of having done it either way.

Mr. SHIPLEY.—Well, look at the record, Mr. Meyer, before you answer that.

A. (Examining papers.) There is nothing in here to show. It may or may not have been prepared by me personally; I don't know, sir.

Mr. ALLEN.—You have no recollection in regard to the preparation of that particular requisition?

A. No, sir.

Q. Have you any recollection of telling a clerk in your office to prepare it? A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. Have you any recollection of furnishing the information upon which it was prepared?

A. No, sir.

Q. Your mind at this time is a perfect blank as to these folders?

A. No, sir, absolutely not. I know the requisition was prepared in the Storekeeper's Office, but as to the details, whether or not I told somebody, or whether or not I did it myself, or whether or not I gave them a memorandum to do it, is a matter—

Q. Have you any personal recollection at this time of furnishing the data or information upon which this requisition was prepared?

A. That is five years ago and it is a physical impossibility.

Q. You are then willing to say you haven't any present recollection?

A. I haven't any with regard to that. [1083—1031]

Q. I will ask you in regard to the next requisition.

A. Requisition, exhibits "17" and "18." The same is true of that. That was prepared in the Storekeeper's Office.

Mr. SHIPLEY.—What requisition?

A. 193, dated December 4th, 1907.

Mr. ALLEN.—Did you personally prepare that requisition, being 193?

A. That I cannot tell.

Q. Did you personally give to any clerk in your office data or information upon which it is prepared, or was prepared?

(Testimony of Edwin F. Meyer.)

A. That I can't say; no information here showing that.

Q. Have you any personal recollection in regard to the preparation of that requisition?

A. I have no personal recollection.

Q. You haven't any personal recollection now with reference, then, to the facts in regard to it, is that right? A. No, sir.

Q. You don't remember it at all, except there is a folder for this particular matter?

A. That is it exactly.

Q. Take the next one.

A. The next is requisition—this is the same requisition 169.

Mr. SHIPLEY.—193 this was.

A. This is 169, exhibit number "15."

Mr. ALLEN.—Did you personally prepare that original requisition?

A. The same is true of that; I can't say.

Q. Answer my question.

Mr. SHIPLEY.—Kindly give us the requisition number.

A. I don't know.

Mr. ALLEN.—Do you recall now whether you had somebody else prepare that requisition? We are talking about this particular [1084—1032] one.

A. No, sir, I do not recall whether I had somebody else prepare that requisition.

Q. Do you recall whether you furnished the information from which that requisition was prepared? A. I do not know.

(Testimony of Edwin F. Meyer.)

Q. You have no personal knowledge of it at this time?

A. No personal knowledge. These requisitions were prepared in the Storekeeper's Office. I probably did.

Mr. MORRIS.—Will you give us the number of that?

Mr. ALLEN.—169.

Mr. MORRIS.—We had 169 awhile ago.

Mr. ALLEN.—What is the next one?

A. The next one is exhibit number "71," requisition 304, February 5th, 1908.

Q. Did you personally prepare that requisition?

A. No, sir, I did not.

Q. Did you personally request anyone to prepare that requisition? A. The records show that I did.

Q. The records show? A. Yes, sir.

Q. Have you any memory in regard to it at this time? A. I have no memory.

Q. You don't recall to what clerk you went with regard to it?

A. No, sir. This shows here, the information here.

Mr. MORRIS.—Speak up louder.

A. This little memorandum here shows the information that I gave the clerk.

Mr. ALLEN.—That happens to be one of the memorandum that was left in the folder? [1085—1033]

A. Left in the folder, yes, sir.

Q. In other words, you prepared it, then; that is your handwriting? A. That is my handwriting.

(Testimony of Edwin F. Meyer.)

Q. You prepared the data and information upon which it was based?

A. I say, I prepared all of those latter ones; that is, when I say I prepared them, they were prepared in the office.

Q. You furnished the information?

A. And I furnished the information. That is, I have no personal recollection of whether I did the physical work, or whether the physical work was done by some one else, but that has an indication that the physical work was done by another clerk.

Q. Now, we will get down to recent history. I call your attention to 438.

Mr. SHIPLEY.—Is that the requisition number?

The COURT.—What is the exhibit number?

Mr. ALLEN.—The exhibit number, your Honor, is "7," Plaintiff's Exhibit "7."

A. Let's see; there are two of them here.

Mr. ALLEN.—I want 438.

A. Yes, they are both 438.

Q. Referring to the original copy of the requisition pasted on the folder, did you or did you not prepare that particular requisition personally?

A. I couldn't say whether I did or not, sir.

Q. You couldn't say whether you did or not?

A. No, sir, I couldn't say whether I did or not.

Q. Did you or did you not request some one else to prepare 438?

A. I couldn't say absolutely whether I did. It has been a long while. [1086—1034]

(Testimony of Edwin F. Meyer.)

Q. So your memory about 438 is rather hazy; is that true?

A. Not any more hazy about 438 than any other requisition along about that time.

Q. Can you now recall any requisition for \$4,000 worth of material of this kind for stock in your warehouse?

A. A large number of requisitions were prepared at that time running into the thousands.

Q. You name for the satisfaction of this jury any one requisition for \$6,250 in the month of April, 1908, for stock in your warehouse?

A. Well, we have an exhibit here—I haven't investigated the files of the navy yard for that purpose, but I think from—say, from March until June you could find a large number of requisitions over \$500, running into thousands of dollars maybe, but I find that there is one here, in looking over these folders, where the amount was about \$3,000.

Q. Read him the question; he probably doesn't recall it. Read him the question. (Question repeated.)

A. I have no facts here from which I could gather that; I don't recall.

Q. You don't recall any, as a matter of fact, Mr. Meyer?

A. I didn't recall this zinc transaction until it was brought up here.

Q. You don't recall the zinc transaction?

A. I say I did not.

Q. Don't you think it is remarkable, Mr. Meyer,

(Testimony of Edwin F. Meyer.)

with the splendid memory that you have, that you don't recall anything with regard to the largest zinc transaction that passed through your office during this hurry period for the purchase of supplies in your office? [1087—1035]

A. Well, I don't know it is the largest zinc transaction we were doing.

Q. For the purchase of stock?

A. We were doing lots of business there.

Mr. ALLEN.—Well, with your good memory, Mr. Meyer, is it or is it not a remarkable fact you can't now recall anything with regard to the origination of the largest requisition for stock prepared in your office during those months?

A. Well, there are hundreds of requisitions. I don't know this is the largest. You say it is the largest.

Q. Well, can you tell me anyone that is as large for stock in those two or three months?

A. No, that has been five years ago. I have been separated from these files for five years; it is a physical impossibility.

Q. Yes.

A. I haven't seen the files for five years, sir.

Q. Well, where is 438 again?

Mr. MORRIS.—Isn't there a photographic copy of 438 here that shows the initial of—

Mr. ALLEN.—Just a moment, now, you can cross-examine.

Mr. ALLEN.—Your Honor, Mr. Vanderveer wanted to recall Mr. Kettlewell and ask him one ques-

(Testimony of J. A. Kettlewell.)

tion. I believe it was with the idea of letting Mr. Kettlewell go, perhaps.

The COURT.—Very well, I have no objection.
[1088—1036]

[Testimony of J. A. Kettlewell, for Defendants
(Recalled).]

J. A. KETTLEWELL, recalled as a witness on behalf of the defendants, further testified as follows:

Direct Examination.

(By Mr. VANDERVEER.)

Q. Mr. Kettlewell, I believe you were examined regarding the practice of your office in sending out proposals and sending them and making awards?

A. Yes, sir.

Q. If I correctly understand the situation, all proposals are made with the right reserved on the part of the Government to reject all bids? A. Yes, sir.

Q. And in each of these folders, on the last page, there is a white sheet which is known as the notice of the award? A. Yes, sir, that is a copy.

Q. That is a copy of the notice which is mailed to the successful bidders? A. Yes, sir.

Q. Who prepares and mails this notice of award?

A. One of the clerks in the office.

Q. At what time is that done?

A. Well, it is done after the bids are opened, of course, and mailed out that evening.

Q. Goes out that evening. Now, until that is mailed out the Government has the right to reject all bids, the matter is open in the Government's hands; is that not true?

(Testimony of J. A. Kettlewell.)

A. Yes, the award might be withheld for some reason or other.

Q. It is a fact, Mr. Kettlewell, is it not, that until that notice is mailed the whole case is in the Government's hands to do as the [1089—1037] Government likes? A. Yes, sir.

(By Mr. ALLEN.)

Q. Mr. Kettlewell, while this power remains in the Government officials to accept or reject any bid, it is a matter of fact, if an officer had a particular personal private interest in seeing that the bid was accepted or rejected, why, that would have some effect upon his conclusion with reference to that particular bid, would it not? A. Yes, sir.

Mr. ALLEN.—That is all. [1090—1038]

[Testimony of E. S. Fowler, for Plaintiff.]

E. S. FOWLER, a witness on behalf of the defendants, recalled on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. Mr. Fowler, you have been sworn, I believe?

A. Yes.

Q. Mr. Fowler, you were called as a witness for the defense the other day and testified in regard to your experience with Mr. Bryan when he called on you in the month of May, 1910, as I remember it. You recall that matter, do you? A. Yes, sir.

Q. At that time in your examination you made use of the following statement: I want to call your attention particularly to it. In answer to a question pro-

(Testimony of E. S. Fowler.)

pounded to you by either myself or Mr. Schlesinger you answered as follows: "And when he came in" referring to Mr. Bryan—"he pulled a card out of his pocket and stated—asked me if I had ever been connected with the Great Western Smelting & Refining Company or the Fowler Metal Company." You said, "Now people come in constantly in my office and pull out cards, and I did not notice that it was a Government officer. I did not pay any attention to it. And I denied the fact that I had—that the Fowler Metal Company had ever been connected with the Great Western Smelting & Refining Company during the time I was manager of that concern." Now, calling your attention to this—

Mr. SCHLESINGER.—You read that so fast, the last three lines, I didn't get it at all.

The COURT.—Read it again, please.

Mr. ALLEN.—I will read that part of it again, Mr. Schlesinger. [1091—1039] "and when he came in"—referring to Mr. Bryan—"he pulled a card out of his pocket and stated—asked me if I had ever been connected with the Great Western Smelting & Refining Company or the Fowler Metal Company. Now, people came in constantly into my office and pulled out cards, and I did not notice it was a Government officer. I did not pay any attention to it. And I denied the fact that I had—that the Fowler Metal Company had ever been connected with the Great Western Smelting & Refining Company during the time I was manager of the concern. It was never known generally that the Fowler Metal Com-

(Testimony of E. S. Fowler.)

pany was identified with the Great Western Smelting & Refining Company, and I denied it. Then afterwards when I came to Seattle and discovered that I was up before the Government, etc., that other matter.

Mr. ALLEN.—I want to ask you whether, on the occasion of the first visit of Mr. Bryan to your office, whether or not he presented and called your attention to, this card (exhibiting card to witness).

A. When I came to Seattle—

Q. Answer the question, please, Mr. Fowler.

A. Yes.

Mr. ALLEN.—He did call your attention particularly to this card?

A. Yes, sir.

Q. And that is apparent on its face he is a representative of the United States Government.

The COURT.—Is that to be offered in evidence? If it is, identify it so you will not lose it.

Mr. ALLEN.—We offer it in evidence, your Honor, with permission to put in a copy.

The COURT.—Identify it so you will not lose the connection. [1092—1040]

Mr. SCHLESINGER.—The witness was about to vouchsafe an explanation when interrupted by counsel. Now, you may explain your answer.

A. I didn't realize at the time, this time it was presented by Mr. Bryan, didn't look at it close enough to know, but when I came to Seattle and realized I was to appear before the Government, I knew it was time for me to tell the truth, and I found

(Testimony of E. S. Fowler.)

Mr. Hutson, I think is the name of the attorney for the Government, and Mr. Bryan, and immediately explained to them the whole proposition. Then Mr. Bryan showed me this card that he stated that he showed me in the first place, and I have *how* word for that, that that is the card that he showed me.

Mr. ALLEN.—Haven't you just testified that was his card he showed you in the first place?

A. I believe it was from the fact of Mr. Bryan showing me the card in Seattle, or rather, in Tacoma.

Mr. ALLEN.—So you understood in the first place he was in some way a Government representative?

A. No, not in the first instance.

Q. Did you or did you not read the card on the—

A. No, not in the first instance.

Q. You looked at it, did you?

A. No, I didn't take it out of his hand and look at it. He just handed me his card and said, "This is my card."

Q. Do men who come into your office usually have cards of that character, with the man's photograph on the face of it?

Mr. SCHLESINGER.—I object as argumentative and not proper cross-examination.

The COURT.—He may answer. Exception.

Mr. ALLEN.—Answer the question.

A. I didn't understand the question. [1093—1041]

(Question repeated.)

A. Well, I didn't really notice the photograph at

(Testimony of E. S. Fowler.)

that time. I didn't notice anything about the card.

Mr. SCHLESINGER.—Did you have the card in your hand?

A. No.

Mr. ALLEN.—We offer that in evidence, with permission of counsel, to certify a copy.

Mr. SCHLESINGER.—I think if we are going to have Mr. Bryan's photograph you ought to give everyone in the courtroom a copy.

Mr. ALLEN.—Any objection?

Mr. SCHLESINGER.—Oh, I don't care whether it goes in or not.

The COURT.—Admitted.

(Card referred to received in evidence and marked Plaintiff's Exhibit "85.")

Mr. ALLEN.—Mr. Fowler, as I understood in your direct examination, you stated that a Mr. Alper suggested to you that he wanted to use the name of the Fowler Metal Company for the purpose of putting in a bid; is that right?

Mr. SCHLESINGER.—Your Honor please, we object to that as not being proper cross-examination and the subject having already been exhausted. You asked me to keep him here to put him on for this one purpose, and I have done so.

The COURT.—Oh, he may answer.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Mr. Fowler, then the next time you heard of this matter was when Mr. Bryan called on you in Oakland; is that right?

A. Yes, sir.

(Testimony of E. S. Fowler.)

Q. The next time it was called to your attention. You didn't receive any other information in regard to it until that time, did you? [1094—1042]

A. No, sir.

Mr. ALLEN.—That is all.

On cross-examination by Mr. SCHLESINGER said witness testified as follows:

Q. Mr. Fowler, did Mr. Bryan put that card in your hands for examination? A. No, sir.

Q. Did he simply take it from his pocket and say, "Here is my card"?

A. He just pulled this out of his pocket and showed it to me, but I didn't look at it, didn't realize what it was.

Q. You appeared before the Federal Grand Jury as a witness for the Government in the year 1911, did you not? A. Yes, sir.

Q. In the city of Seattle? A. Tacoma.

Mr. SCHLESINGER.—Just one more question.

Q. Did you tell the Grand Jury the precise facts as you told them here?

Mr. ALLEN.—I object to that, your Honor.

The COURT.—Sustained. He testified to that.

Mr. SCHLESINGER.—Exception. That is all.
[1095—1043]

[Testimony of Edwin F. Meyer (Recalled—
Cross-examination).]

EDWIN F. MEYER on the stand.

Cross-examination (Resumed).

(By Mr. ALLEN.)

Q. Calling your attention, Mr. Meyer, to Plain-

(Testimony of Edwin F. Meyer.)

tiff's Exhibit Number "77," I will ask you whether or not you personally prepared that requisition.

A. May I have the Storekeeper's folder, please?

Q. What is the number? A. 154.

Q. In the meantime, while we are finding that folder, I will ask you as regards Plaintiff's Exhibit Number "79," 444, as to whether or not you personally prepared that (handing same to witness).

A. I would like in each case, please, to have the Storekeeper's folder.

Q. Well, I thought he was handing me that. That is the one on this side of the Sound, isn't it?

A. Yes.

Q. Mr. House insists this is the right copy of 154. Is it or is it not?

A. This is the Storekeeper's copy of 154; this isn't the copy you had just now.

Q. Did you personally prepare that requisition?

Mr. MORRIS.—Mr. Allen, if you will stand back from the witness then he would answer so the jury would hear and we would hear. He drops his voice.

A. Judging from the instrument it is—

Mr. ALLEN.—I am asking you as to your personal recollection in the matter. [1096—1044]

A. No, sir, from personal recollection, no, but from this memorandum in here I would say that I did not do the physical work.

Q. You would say that you did not?

A. Yes, sir, but that memorandum is the only information that I have.

(Testimony of Edwin F. Meyer.)

Q. You have no personal recollection in regard to the matter?

A. No personal recollection; no sir.

Mr. SHIPLEY.—Is that 154?

Mr. ALLEN.—That is 154.

Q. You have no personal recollection, then, of requesting the clerk there to help you prepare the requisition?

A. No personal recollection, except from the record inside the folder.

Q. Mr. Meyer, in the preparation of a *requisition* were concerned about several different things. You were concerned, as I understand it, with reference to the time when you would need the material; isn't that true?

A. Yes, sir, the probable time.

Q. The probable time when you would need the material? A. Yes, sir.

Q. You were concerned as well with regard to the amount of the material which you might require; is that true? A. The quantity.

Q. The quantity of the material which you might require? A. Yes, sir.

Q. You were concerned as well as to the price which you must estimate or fix upon that material; isn't that true? A. Yes, sir.

Q. You had, then, for the purpose of covering these different—where would you get your information with regard to the quantity which you required? [1097—1045]

A. It depends very largely upon the conditions

(Testimony of Edwin F. Meyer.)

existing at that particular time.

Q. Read him the question, please. (Question repeated.)

A. The same answer, Mr. Allen. In probably all—

Q. With reference, calling your attention to an article such as zinc of the size 12 by 6 by $1\frac{1}{2}$ inch. Where would you get your information with regard to the quantity which you would require?

A. Well, I would get that from the demands of the ships; I would get it from the storeman—later on from the storeman.

Q. In getting it from the storeman, then, you would refer to this card, referring to zinc plates of that size, you would refer to this card which was in the warehouse of the storeman; is that right?

A. Ordinarily, yes, sir.

Q. Ordinarily? A. Yes, sir.

Q. On the first day of April, 1908, or prior thereto, did you proceed to the warehouse and examine this particular account "E"? A. No, sir.

Q. Do you remember whether you did or not?

A. I don't remember.

Q. Are you sure that you did not do so?

A. I won't say that I did not do so.

Q. Will you say that you did so? A. No, sir.

Q. You don't remember whether you did or not?

A. No, sir, not from personal memory now whether I did or not.

Q. You have no personal recollection?

A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. You could, by personal inquiry from Mr. Lockwood, by phone or [1098—1046] personal call, have ascertained that on April 1st, 1908, you had in your warehouse 52,404 pounds of zinc of the size 6 by 12 by $1\frac{1}{2}$ inch, couldn't you?

A. I could have ascertained that.

Q. You could have ascertained that, and yet you are not now prepared to tell the jury whether, as a matter of fact, you did go and make that inquiry; is that right? A. My best judgment is that I did not.

Q. That you did not? A. Yes, sir.

Q. Then, Mr. Meyer, in fixing the estimated cost, you testified the other day that this estimate placed by you was an absolute restriction upon the purchasing officer that he was not supposed to exceed by ten per cent the amount of the estimate supplied by you; is that right?

A. When I say absolute, I don't think I said absolute, because I don't so consider it.

Q. I said he was not supposed to; is that right?

A. That is better, yes, sir.

Q. That is a restriction upon the Purchasing Officer at Seattle? A. So regarded at that time.

Q. So regarded, and supposed to be followed, as a matter of fact, by policy?

A. Yes, sir, that he should not exceed that.

Q. Then as that was the governing check upon other officers and employees of the United States Navy with reference to the purchase of supplies, the amount of that, the highness or lowness of the estimate, becomes a serious matter as regards the costs

(Testimony of Edwin F. Meyer.)

of that article, doesn't it?

A. No, sir, it doesn't become a serious matter.
[1099—1047]

Q. In other words, it was a check as regards the gross amount which might be paid for an article, it was a check upon the other officers; isn't that true?

A. As regards exceeding that, yes, sir.

Q. Yes, sir. A. Yes.

Q. Then, if there was a wrong conspiracy or an agreement, on the part of someone else other than yourself, Mr. Meyer, to wrong the Government by obtaining a high price, if you placed a high or unusual estimate upon the cost of that particular article, that would then necessarily serve the purpose of the men on the other side of the Sound, would it not?

A. That is a conclusion I imagine would follow.

Q. That is a conclusion that would follow?

Mr. ALLEN.—To what source did you go in your attempt to fix the estimate of 12½ cents prepared on requisition 438?

A. I cannot at this time say. It must have been fixed in my mind. There are a large number of requisitions going through at that time for zinc. The fixed or standard local price seemed to have been about 12½ cents, as shown by the approval of those requisitions and awards by the navy yard at Washington, D. C.

Q. You might have gone, Mr. Meyer, to your own books from supply houses for the estimated prices, mightn't you? A. I could have.

Q. You could have? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. You might have gone to your own ledger and ascertained from there the cost of that same article in prior purchases; is that true? A. I could have.

Q. You could have? [1100—1048]

A. Yes, sir.

Q. Calling your attention to Plaintiff's Exhibit "1"—calling your attention to Plaintiff's Exhibit Number "2," I will ask you whether or not that has been identified, as I understand, and is a part of the ledger kept in your office within 10 or 12 feet from where you sat. Tell the jury as to whether or not you referred to this ledger at that time in your attempt to get the estimated cost or price to be fixed upon a carload of zinc for the navy yard.

A. I don't think I said that I attempted to get the estimated price. I would testify, however, that, to the best of my recollection, I did not refer to this.

Q. You did not refer to that? A. No, sir.

Q. So then you didn't observe that the United States Government had had delivered to it within a month a car of zinc which cost them .713 cents per pound, did you?

A. I don't think I referred to it at the time.

Q. You haven't any recollection that you did?

A. No, sir.

Q. If you did see it that time you disregarded it, isn't that true?

A. Well, I did not disregard it. It was the idea to purchase that through the local pay office.

Q. If you did see that you disregarded that estimate, didn't you?

(Testimony of Edwin F. Meyer.)

A. Yes, if I did I disregarded the estimate, yes, sir. I might also say here in answer to that, that there was in the same book, probably the very next page, a sheet which showed estimates ranging from ten to sixteen cents. I might have referred to the book and might have seen that page.

Q. In carload purchases? [1101—1049]

A. I wouldn't look for carloads particularly.

Q. Those were the last four purchases in your ledger that I have just shown you?

A. Those are the bookkeeper ledgers.

Q. Yes, and you would naturally refer to the last purchases rather than five years ago?

A. Five years ago?

Q. Wouldn't you naturally refer to the last purchases?

A. Truly, I don't think any of those referred to five years ago.

Q. You would naturally refer to the last ones rather than six months or a year ago?

A. Those were in there at that time.

Q. Did you see either one of them?

A. I don't recall that I did.

Q. Did you at that time, when you were making your estimate of 12½ cents, did you have any memory of the fact that there had crossed your desk this invoice of a car of zinc at \$7.13 a hundred?

A. I have no memory of that. There were thousands of papers crossing my desk.

Q. Did you have any memory about it, then, Mr. Meyer, on April 1st, 1908?

(Testimony of Edwin F. Meyer.)

A. Evidently I did not; I can't say now I did.

Q. If you had remembered that that would probably have caused you to lower this estimate in price?

A. I think it would have.

Q. You didn't go back through the records, then, to find out what other purchases of cars of zinc had been made to the United States Government there?

A. There were so many and numerous requisitions at that time I think [1102—1050] the price was probably fixed in my mind at that time.

Q. Do you remember any other purchases of cars of zinc other than this that was delivered to the Government there within two weeks?

A. Not cars, no, sir.

Q. Not cars, no, sir, not like that. Well, when this requisition came up to you, or as you prepared it, then you want to say it was done?

A. It isn't a question of wanting to say, Mr. Allen.

Q. Well, whichever way you say—pardon me, then. Whichever way this was done, Mr. Meyer, I show you Plaintiff's Exhibit Number "6" and Plaintiff's Exhibit Number "5," referring to the original requisition which went, as I recall, to the Auditor's Office. Referring at the same time to requisition number 6, that part of the requisition which went to the Board of Supplies and Accounts, or Department of Supplies and Accounts, I will ask you whether or not, as this requisition was prepared, whether this part which went to the Auditor's Office was placed on top of that requisition which went to

(Testimony of Edwin F. Meyer.)

the Department of Bureau of Supplies and Accounts?

A. I didn't hear that, will you read that question, please.

Q. (Question repeated.)

A. I think so. This is the first copy and—

Q. You say this is the first copy?

A. This first copy that is now with the Auditor, yes, sir, that was forwarded with a number of other copies.

Q. Where was it placed with reference to this copy which went to the Bureau of Supplies and Accounts?

A. It was the first copy placed necessarily, the first paper.

Q. Then one of the other papers below would go to the Bureau of Supplies and Accounts? [1103—1051] A. Yes, sir.

Q. In other words, as these came up, then, the six copies, the one that went to the Auditor's Office with no price extended thereon, appeared on top; is that right? A. Yes, sir, that is correct.

Q. As that now appears, Mr. Meyer, it says "50,000 pounds of zinc, *pounds of zinc* rolled sheet boiler plate $\frac{1}{2}$ by 6 by 12," with no estimate thereon as to the proposed cost of that zinc. That is the usual and ordinary form, isn't it?

A. That is the regulation, yes, sir.

Q. There is no extension thereon of the proposed cost to the United States Government. Is that the usual and customary form?

A. That is the regulations.

(Testimony of Edwin F. Meyer.)

Q. Then as soon as those were laid on your desk, these without the price thereon were on top and the other copies were below, is that right?

A. Yes, sir.

Q. When they went from your desk to the desk of Paymaster Spear would they go in that same form and manner? A. Identically.

Q. In other words, when they reached Paymaster Spear's desk this copy was on top which has not the price extended thereon, is that right?

A. Yes, sir.

Q. You have heard Paymaster Spear's testimony as regards his method of handling these requisitions as they came up to him, that he would turn back the original requisition which has not the price thereon and take a look at the price on the second sheet. Does Mr. Spear's testimony in that regard conform or confirm your own personal recollection? [1104—1052] A. I think that is so; yes, sir.

Q. That is substantially true? A. Yes, sir.

Q. Then, when these requisitions, that is, the original and five copies, reached the desk of Mr. Spear, with the original copy without any price extended, if you rolled back the original sheet and looked at this second, or any copy thereafter, which says \$625, unless Mr. Spear stopped to read the entire requisition he would think that the estimate was for the purpose of \$625, would he not?

A. Yes, sir, naturally.

Q. Naturally. A. Yes, sir.

Mr. ALLEN.—Mr. Spear had, then, with this sec-

(Testimony of Edwin F. Meyer.)

ond sheet before him, he would have had, then, the possibility, if he noticed this disparity at all, he had, then, the possibility of solving in his mind as to whether it was intended for 5,000 pounds and a real total of \$625, or whether it was intended for a purchase of 50,000 pounds and a total of \$6,250, he could figure or guess either way, couldn't he?

Mr. ALLEN.—You were never interested in the fact of the probable consummation of this deal, but endorsed in your own handwriting thereon a request to fill requisitions from the Atlantic Battleship Squadron—request the waiving of advertisements and purchase through the Navy Pay Office, Seattle, Washington; you made that personal request, did you not, at that time?

A. I wouldn't consider it a personal request. It was done in the performance of my duty as I saw it at that time.

Q. You wrote that on there at that time?

A. I did, and I so wrote that on every requisition that left the [1105—1053] Storekeeper's Office over \$500 at that period.

Q. You knew at that time that you were proposing to buy a full car, 50,000 pounds, of zinc at an estimated price of 12½ cents a pound, didn't you?

A. Why, I thought there must be about two cars.

Q. You thought it might be about two cars?

A. Yes, I thought it might be about two cars.

Q. Although you just had a bill of lading for exactly the same amount to go through your hands within two weeks, you thought this would be two cars?

(Testimony of Edwin F. Meyer.)

A. Bills of lading and other papers are routine; I wouldn't pay very much attention to those things unless I went looking the information up.

Q. A little purchase like a car of zinc, then, when you are ordering one within two weeks, did not attract your attention?

A. There were probably a thousand of those things at that particular time; not a thousand cars, but a thousand things. I was concerned principally in the items, not so much—

Q. How many cars of zinc did you purchase in the year 1908 through the Navy Pay Office, through that Navy Pay Office here in Seattle?

A. I can't say; not many.

Q. Don't you know, as a matter of fact, you didn't purchase any more?

A. Well, we bought 22,000 pounds at one time.

Q. Answer my question.

Mr. SHIPLEY.—We submit he is answering.

Mr. ALLEN.—Don't you know you didn't purchase another full car of zinc in the year 1908 through the Seattle Office?

A. Well, 22,000 pounds might be a car. We purchased that in 1908. [1106—1054]

Q. You never purchased one at 50,000 pounds or one approximately at that amount?

A. No, sir, I shouldn't say that, either. I shouldn't say that I purchased, because I don't purchase, but I presume I submit a requisition for it. That is a mere technicality, but I would like to straighten it out.

(Testimony of Edwin F. Meyer.)

Q. I understand. You fixed, then, Mr. Meyer, the period of time of fifteen days, I believe, on this requisition as it left your office; is that right?

A. Yes, sir.

Q. You had, then, information in your hands at that time that a car of zinc had been awarded and a delivery made in about three to four weeks. Why didn't you fix the same liberal allowance of time on this requisition that it required in the case of the purchase by the Government of the other sum or similar amount?

Mr. MORRIS.—We object to the question. It is not founded upon any evidence in this case. The evidence is not three or four weeks, Mr. Allen, it is three or four months. It was purchased in December, 1907, and delivered in March, 1908.

The WITNESS.—Requisition was made in the Storekeeper's Office, Puget Sound, Washington, December 8th, 1907.

Mr. ALLEN.—I will not ask that; I withdraw it.

Q. Do you recall the fact the award was made in this former car of or purchase of zinc on the 4th day of February, 1908, and that zinc arrived in your yard about five weeks thereafter.

A. If the records show it that is true, yes, sir. I have no personal recollection.

Q. Arrived thereafter on the 7th day of March?

A. I have no personal—

Q. You could have ascertained that fact by referring to this ledger, [1107—1055] or referring to the bill of lading which had gone through your

(Testimony of Edwin F. Meyer.)

hands? A. Yes, sir, I could have.

Q. Then, if you had fixed the proper amount of time required under your former experience or within a month, then the Seattle Hardware Company or any other concern in the city of Seattle of like standing, could have purchased that zinc in the open market and supply the navy yard?

A. You understand that award was made in Washington, and my requisition called in the first place for delivery within—in two installments. The Bureau at Washington altered that.

Q. You are talking about the original one?

A. I am talking about the first one.

Q. I am talking about the second one.

A. You are shifting so much.

Q. If the record discloses, as you know it does disclose, Mr. Meyer, that in the original purchase, the original car of zinc, the award was made on February 4th, and the zinc arrived in your yard on March 7th thereafter, why didn't you give this contractor who was going to supply the second car of zinc the period of time which was shown from your own records would be necessary.

A. I didn't give the contractor anything in the case of the second. I merely stated in the requisition it was wanted fifteen days after date of award. That wasn't binding upon the Purchasing Pay Officer. That is elastic; he could have made it twenty-five or thirty days. In fact, in most instances he paid very little attention to that requirement there.

Q. In this particular case, Mr. Meyer, he reduced

(Testimony of Edwin F. Meyer.)

the time to five days. If there wasn't a car of zinc on the Seattle market wouldn't the United States Government, with the five-day delivery, [1108—1056] been absolutely helpless in the face of that sort of an award?

A. The requisition stated fifteen.

A. I can't say as to that, as to the helplessness of the United States Government, sir.

Q. Beg pardon?

A. I can't say as to the helplessness of it.

Q. You do know, Mr. Meyer, the shrewd man that you are, that the time of delivery, where you are purchasing material that isn't on this market, where it must be had from a distance, that the time of delivery of that material is a vital element in the cost and the number of bidders who might participate or bid on that award?

A. I could have made the delivery on the requisition five days in the first place, instead of fifteen, had I looked at it in the way you wish me to, or think I am, or did.

Q. You could have made it that?

A. I think so, yes, sir, but I made it fifteen because—

Q. If the battleship fleet, as you knew, Mr. Meyer, at that time was coming, the first ship, about the 22d day of May, 1908, the other boats to come thereafter, if you knew that fact at that time, why didn't you give the Government the benefit of the doubt and provide for a delivery of, say, thirty days, which would be the 15th day of May, 1908?

(Testimony of Edwin F. Meyer.)

A. Why, do you understand how much time it takes for the correspondence to go back and forth and for bids to be received on these things? Sometimes it takes as many as thirty days on these things.

Q. But award was made on the 15th.

A. I had nothing to do with the award in that case, sir. The requisition was initiated before the award was made, and [1109—1057] this was a statement that was put on the requisition.

Q. And you knew as soon as that traveled to the city of Washington that telegraphic authority would come to the Navy Yard Office in the city of Seattle to purchase that zinc under the conditions you had inserted upon this requisition, didn't you?

A. Well, then it was up to the Purchasing Pay Officer to get bids. Sometimes it takes two weeks for him to get bids.

Q. But you knew, as a matter of fact, that the telegraphic word would come from Washington for this Navy Pay Office to proceed and buy that article, didn't you?

A. Not always, sometimes they did.

Q. Tell this jury what requisitions from the Atlantic Battleship Squadron were on file in your office on April 1st, 1908?

A. I don't know that any were there. We began to receive requisitions on or about that time.

Q. You saw the letter here, you have read the letter of Paymaster Spear of April 21st or 22d, 1908, in which he asks them for requisitions, and yet you don't prepare to—

(Testimony of Edwin F. Meyer.)

A. Well, we then had requisitions in the Store-keeper's Office. I saw them no doubt around April 1st from battleships. They were forwarded up from Magdalena Bay and Santa Cruz, and around there.

Q. Did you have any requisitions from any Atlantic Battleship, or any battleship on the Atlantic Coast on or before April 1st, 1908, in your office?

A. On or about April 1st we had requisitions.

Q. On or about? A. Yes, sir.

Q. This requisition left your office on April 1st?

A. Yes, sir.

Q. Did you have any prior to that date? [1110—1058]

A. I can't say as to that, but it wouldn't have been necessary. That requisition was not based on requisitions from battleships. The material was required for it to fill requisitions, that is, requisitions to be received. This was in anticipation of the requisitions.

Q. This was in anticipation?

Mr. SCHLESINGER.—I must object. Counsel must not inject his own personal remarks or opinions while this man is testifying. It is the worst kind of official misconduct.

The COURT.—Proceed.

Mr. SCHLESINGER.—Allow us an exception.

Mr. ALLEN.—This card from Lockwood's storehouse, you have heard the testimony that approximately 15,000 pounds was all that was ever delivered to the ships of the Atlantic Battleship Squadron?

(Testimony of Edwin F. Meyer.)

A. Correct, sir.

Q. If there were any requisitions on file in your office they wouldn't at least have exceeded that sum, would they? A. I didn't ask for this—

Q. Pardon me. Read him the question.

A. This is the fact: This was in anticipation and not for the purchase of anything upon requisitions which had been received. We were required to anticipate these requisitions, their requirements. If I had waited until these requisitions came in from the ships the ships never would have gotten the supplies.

Q. Well, Mr. Meyer, your purchases of zinc plate has heretofore always been in small amounts?

A. Very small; yes, sir.

Q. Very small amounts, and the navy authorities at Washington had supplied you with 50,000 pounds and you just received it? [1111—1059]

A. Yes, sir.

Q. And when the actual requirements of the Atlantic Battleship Squadron didn't exceed 15,000 pounds you went rather strong when you asked for 50,000 didn't you?

A. The actual requirement—one requisition there shows a requirement of 1500 plates, and that would amount to 15,000 in itself, one ship.

Q. You are reading now for this jury into that requisition which you started to read wrongly to them this morning?

A. I did not start to read wrongly.

Q. You read the letter "S" as reading "sheet"?

(Testimony of Edwin F. Meyer.)

A. No, sir.

Mr. MORRIS.—May it please your Honor, again I appeal to this Court for protection, and we have tried to keep within the bounds of decent practitioners. If the Court doesn't furnish us the protection we appeal for we have got to take it on our own hands and take the consequences. Now, we again respectfully request the Court to instruct the District Attorney not to make these insulting remarks and insinuating remarks that are not justified in any court of justice.

The COURT.—Why, Mr. Morris, I just suggested those interpolations be eliminated and proceed with the trial, and I simply made the observation that has been going on during this trial, and there is no occasion to refer to it again. Proceed.

Mr. MORRIS.—Exception.

Mr. ALLEN.—Mr. Meyer, if Mr. Lockwood, the custodian in charge of the metal storehouse at the navy yard says that there was 1500 pounds of zinc delivered to that ship, the "Kearsarge," I believe it was, in regard to which you testified this morning, Mr. Lockwood is more likely to be right about the matter than you are [1112—1060] with your speculation possibly as to what that might mean; isn't that true?

A. I am not speculating as to the delivery of the zinc. I am stating a fact which actually exists on the requisition, that the requisition called for 1500 plates and not pounds.

Q. It calls for 1500— A. Plates, sheets.

(Testimony of Edwin F. Meyer.)

Q. Do you wish to tell the jury at this time that requisition does read sheets, or says the letter "S"?

A. It doesn't use the letter "S"; it says number, meaning the article.

Q. Mr. Meyer, doesn't it, then, use the letter "S" in that way? A. No, sir, it does not.

Q. You, in your endeavor to ascertain the amount of zinc actually on hand, and your promise of using a second car, would be controlled, would *it* not, ordinarily, Mr. Meyer, by the amount of zinc that you had in your warehouse as computed against the probable demands on that store; isn't that true?

A. Yes, sir.

Q. Calling your attention to a matter to which I called your attention this morning, is that the sheet (handing paper to witness)? A. Yes, sir.

Q. What did you read into that except the words "207, number, do 1500 S, zines for boilers 12 by 6 by 1/2 inch, 15 \$225 E." Is there anything else on that requisition you didn't show me this morning? A. Anything else I didn't show you?

Q. Yes.

A. I don't know I showed you very much. That "S" was inserted [1113—1061] there by me. You will find quite a number of them there.

Q. When did you insert that?

A. When it got in my hands. You will find that on most of these requisitions. That "S" is a designation.

Q. Did you insert that at that time or recently?

A. No, indeed. This was inserted—

(Testimony of Edwin F. Meyer.)

A. He is right here talking in my ear. There is that "S" against all those items showing it was inserted at the time the requisition was made in my office.

Mr. ALLEN.—I was trying to ascertain whether there is anything on here that shows that is plates instead of pounds, Mr. Meyer

A. Well, it doesn't say plates, p-l-a-t-e-s, but it says "Number," which is the same thing.

Q. Was there ever a ship, Mr. Meyer, that took 15,000 pounds of plates of this size out?

A. We have a ship smaller than that that took 10,000 pounds.

Q. Was there ever a case of a ship that took 15,000 pounds, Mr. Meyer?

A. I have no recollection of it, Mr. Allen.

Q. And don't you know, as a matter of fact, this ship only took 1500 pounds?

A. I think the ship wanted 1500 plates.

Q. You think. It is based upon your observation?

A. Well, it is shown there by the record, Mr. Allen. That is the only thing I can go by.

Q. What did they get, Mr. Meyer, how much did they get? A. I have no knowledge of that.

Q. The card shows 1500?

A. Well, the card does, but that need not necessarily—

Q. You haven't any personal knowledge beyond that card? [1114—1062]

A. To the contrary, no, sir.

Q. Nothing beyond that card?

(Testimony of Edwin F. Meyer.)

A. No, sir. But I would say if an officer of the ship asked for 1500 plates they came pretty near getting it, because they don't get very much less than they ask for, if the material is on the yard.

Q. Calling your attention to Plaintiff's Exhibit Number "79," which is requisition number 444, did you ever prepare that requisition personally (handing same to witness)?

A. I would like to see the Storekeeper's folder. This is the Pay Office. If there is anything in it showing a memorandum or anything—otherwise, that wouldn't have any information, sir.

Q. Have you any personal recollection about 444?

A. No, sir.

Q. You are not prepared to say at this time that you did or did not personally prepare the original requisition; is that right?

A. Not from personal recollection.

Q. You won't say whether you did or not, or whether you requested some clerk to do it; is that right?

A. No, sir. It has been five years ago and pretty hard to say from memory.

Q. Calling your attention to Plaintiff's Exhibit Number "63" (handing same to witness), I will ask you whether or not you personally ever prepared that requisition.

A. Let me have the Storekeeper's folder.

Q. You look for it, Mr. Meyer; you are more familiar with it than I am.

Mr. SHIPLEY.—Give us the number.

(Testimony of Edwin F. Meyer.)

A. 356. I am not able to say personally whether I did the physical work; that is what you want?
[1115—1063]

Mr. ALLEN.—That is what I am asking about.

A. Yes.

Q. Did you or did you not personally prepare that? A. I don't know.

Q. Do you remember now whether you did or did not personally request anyone in your office to prepare that?

A. I don't know. It may have been either way.

Q. You don't personally recall 356?

A. Yes, sir. By the way, this is 358.

Q. All right. I ask you about the next one. What is the number of that requisition? A. 79.

Q. Did you personally prepare that requisition?

A. No, sir, I did not.

Q. You did not? A. No, sir.

Q. Did you personally request some one to prepare it? A. No, sir.

Mr. MORRIS.—What is the requisition?

A. 79.

Mr. MORRIS.—Is that the exhibit number?

A. Yes, sir.

Mr. ALLEN.—Did you furnish any information upon which it was prepared?

A. No, sir, I have no recollection of it. *I almost* positive I did not.

Q. You were then Principal Clerk, were you not, in that office? A. Yes, sir.

Q. Your duties, then, as requisition clerk, re-

(Testimony of Edwin F. Meyer.)

quired you to prepare those, did it not? [1116—1064]

A. Some requisitions, but this requisition was prepared in the Steam Engineering Department.

Q. As a matter of fact, that came through your office?

A. That was prepared in the Steam Engineering, then forwarded to our office.

Q. Are you prepared to say whether or not you quoted the figure at which that was prepared?

A. No, sir, I did not.

Q. You are absolutely sure that you did not?

A. Absolutely sure.

Q. Why are you so positive about it?

A. For the reason it bears the earmarks of having been prepared in another office.

Q. But you are not prepared at this time to tell this jury whether or not they phoned to you at that time or not?

A. No, sir, they were not in the habit of phoning generally; they did sometimes.

Q. They did sometimes? A. Yes.

Q. Well, tell me the next item.

A. 79. This is not the Storekeeper's copy, but I don't need that, other earmarks I didn't remember of, and it was not prepared in our office.

Q. It was not prepared in your office?

A. No, sir.

Q. Take a look at the next one, then?

A. Neither was this prepared in our office.

Mr. SHIPLEY.—Which one is that? A. 81.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—That is Plaintiff's Exhibit "67"?
[1117—1065]

A. That is Plaintiff's Exhibit "67," requisition 81.

Q. Do you recall now whether or not they phoned to you or made inquiries in regard to that price?

Mr. MORRIS.—Is that requisition 81?

Mr. ALLEN.—Yes, sir.

Mr. MORRIS.—What is the exhibit number?

Mr. ALLEN.—"67."

A. I am not prepared to say at this time.

Q. You don't know whether they did or did not?

A. I am not prepared to say.

Q. They may have done so; is that right?

A. Oh, there is a possibility.

Q. Yes. A. It is quite a number of years ago.

Q. Calling your attention to Plaintiff's Exhibit Number "14," which is requisition number 649, did you prepare that requisition in your office?

A. This was prepared in our office, yes, sir.

Q. Did you personally prepare that requisition?

A. I can't say. Just a second—I can't say whether I personally prepared it or not.

Q. Did you ever direct or cause to be prepared that requisition 649,—I think it is?

A. I caused it to be prepared; it was prepared in our office.

Q. You caused it to be prepared and you fixed the estimate in that requisition, did you not?

A. The same procedure, yes, sir.

Q. You fixed the estimate of 40 cents a pound on that particular kind of bronze, did you not?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, I say I did. It was done in the regular course of [1118—1066] business. I may not have fixed it, but I am willing to accept the responsibility.

Q. You are responsible for the fact?

A. Not any more responsible than others in the office, but I accept the responsibility.

Q. You accept the responsibility?

A. I accept the responsibility, yes, sir.

Q. And in this particular case, look at the exhibit and tell the jury at what price it was awarded and to whom in each case?

A. You refer to toban bronze particularly, or course?

Q. I do, yes.

A. Great Western Smelting & Refining Company got several items there since, 9, 10 items at 50 cents per pound, 10 cents a pound in excess of the estimate.

Q. That was awarded to the Great Western Smelting & Refining Company, of which our friend Mr. Goldberg is manager, is that right?

A. You said our friend, sir.

Q. Well, Mr. Goldberg, then? A. Yes, sir.

Q. What was the delivery made as shown by that record by Mr. Goldberg's concern, by the Great Western Smelting & Refining Company? First tell me the number of pounds awarded to the Great Western.

A. You want the total number of each item?

Q. No, I want the total number of pounds awarded to the Great Western?

A. I will have to do a little computation here.

(Testimony of Edwin F. Meyer.)

Q. Very well, go ahead.

A. 755 pounds, as near as—if I make it correct.
[1119—1067]

Q. 755 pounds, then, was awarded to the Great Western Company. How much was delivered there under their award?

A. I have some more computation here. You mean how many pounds delivered or claimed to have been delivered?

Mr. ALLEN.—How much did they deliver, claim or deliver either?

A. Well, there might be—it might be two separate amounts.

Q. How much did they deliver, then?

A. Well, they claimed to have delivered 935 pounds. Now, the Inspection Call—

Q. Look for another Inspection Call and see if you don't find one for 1497½ pounds, Mr. Meyer.

A. Beg your pardon, sir.

Q. Look for an Inspection Call and see if you don't find one for 1497½ pounds.

A. I only find—oh, yes, there are two Inspection Calls here. One was cancelled. I find none for the quantity you speak of.

Q. What is that, fourteen hundred and how many pounds (showing)? A. Well,—

Q. Get the other Inspection Call. You have got the wrong one there.

A. I think you have the wrong one in mind. It is another folder you have in mind, isn't it?

Q. Will you find that Inspection Call for me, Mr.

(Testimony of Edwin F. Meyer.)

House? If there are two Inspection Calls there they would both come out of your office, wouldn't they?

A. Correct, sir.

Q. What is that Inspection Call, how much (showing)?

A. Well, I would have to compute that. Let me have something to write on. Well, there are a lot of fractions here and it will take some time to add it; the figures are irregular, too, if [1120—1068] you can simplify this in any way, shape or form, the figures are very irregular.

Q. It shows 1497½ pounds. You run over that and see if it is correct.

A. I will concede that. Yes, sir, it is approximate.

Q. Have you run over that at some other time to check it up?

A. No, I have not, but I concede that.

Q. Thank you very much. If there was 1497½ pounds of toban bronze delivered there and the original requisition was for 755, there was a considerable excess there on hand, was there not, Mr. Meyer? A. Yes, sir, there would have been.

Q. Now, with this bronze lying there in Bremer-ton; if it was taken away from the yard, what officer in the Storekeeper's Office would deliver the pass which would take it out, or take it away from the yard so it could be removed?

A. What officer?

Q. What officer, or subordinate officer, including yourself?

A. Why, at that time I don't think any passes were

(Testimony of Edwin F. Meyer.)

necessary to get it out.

Q. As a matter of fact,—

A. I don't recall. I think there were materials being shipped back as soon as it was rejected on a contract.

Q. Refreshing your recollection, at that time, as a matter of fact, didn't you issue passes for taking material rejected away from the yard—did you or did you not? A. I don't think I did.

Q. Well, will you say that you did not?

A. I don't think passes were required.

Q. You don't think they were required? [1121—1069] A. No, sir.

Q. If they were required you were the man who issued them?

A. Yes, I would be, if required, but they were not issued. I remember issuing very few passes.

Q. You testified yesterday a small amount was awarded to the Whiton Hardware Company at thirty cents. Refreshing your recollection, doesn't it aggregate \$279 worth?

A. Did I say—I don't know that I said a small amount.

Q. Well, as a matter of fact, it isn't a small amount?

A. \$275 is a small amount as compared with the other.

Q. That is 900 pounds of bronze at thirty cents a pound? A. Yes, just about.

Q. It is about right? A. Yes, sir.

Q. Then thereafter a new requisition appears,

(Testimony of Edwin F. Meyer.)

which is numbered Plaintiff's Exhibit Number "16."

Was that requisition instituted by you, Mr. Meyer?

A. Yes, sir, it was instituted in my office.

Q. In your office? A. Yes, sir.

Q. I want you to take these two requisitions, the one I have just shown you and this one (showing), and tell the jury how they approximately compare with regard to the excess left there by Mr. Goldberg's concern and the amount of this material called for in this new requisition.

A. This takes up the excess delivery (showing).

Q. This takes up the excess delivery?

A. Yes, sir.

Q. State to the jury what price you estimated or placed upon this new purchase by the United States Government. [1122—1070]

A. The estimate was placed on it at 50 cents.

Q. Did you place that estimate on there?

A. It was probably done under my general supervision.

Q. You were responsible for it, aren't you, Mr. Meyer? A. I accept it, sir.

Q. You are not trying to avoid the responsibility?

A. No, sir.

Q. If the United States Government could purchase it from the Whiton Hardware Company at thirty cents it was all right for that United States Government to buy it at 50 cents?

A. No, sir, the United States Government reserved the right to purchase it for thirty cents in this case. The estimate is not a guide to the purchase.

(Testimony of Edwin F. Meyer.)

Q. It wouldn't go above that purchase more than ten per cent?

A. It could not, no, according to the interpolation of the law at that time.

Q. And you knew if there was anything improper on the other side of the sound, that this high price would facilitate the matter, did you not, at that time?

A. Not anything wrong on this side of the Sound; no, sir.

Q. If there was anything wrong, Mr. Meyer, you knew this high estimate would help things over here?

A. No, sir, I didn't know that.

Q. As a matter of fact, from your wide experience, don't you know that is true?

Mr. SHIPLEY.—Your Honor, he is arguing these things to the witness, or trying to have this witness argue the case to the jury.

The COURT.—Yes, that is argument. [1123—1071]

EDWIN F. MEYER on the stand.

Cross-examination (Resumed).

(By Mr. ALLEN.)

Mr. ALLEN.—Your memory is sufficiently good that you are able, after a period of some years, to direct to Mr. House, the representative here of the United States Government, requests for particular requisitions, calling them by number, and even giving the date; isn't that true?

A. In some instances, yes, sir.

Q. In many instances, isn't that true, Mr. Meyer?

(Testimony of Edwin F. Meyer.)

A. Why, I don't know exactly what you mean by many. I think in some instances I have.

Q. From your experience with men, both in a business way and as you have met them in life, haven't you rather a remarkable memory, as a matter of fact?

A. I have a fairly good memory. The term remarkable is rather—

Q. Yes. Is it not, as a matter of fact, remarkable as regards fixing in your mind numbers and dates and other matters of that kind?

A. Again I question remarkable.

Q. I mean, when I use the word "remarkable" I mean as compared with the general run of mankind?

A. I can't say as to that. I think I have a fairly good memory; I can't say as to the—

Q. You think you have a fairly good memory?

A. Yes, sir.

Q. Something was said in your direct examination with regard to the \$500 limit beyond which you could not go without securing the [1124—1072] approval of the Secretary of the Navy. I believe that something was said in that connection in regard to the year 1909 and '10. I will ask you now, Mr. Meyer, whether it was your intention to leave with the jury or with myself the thought that this \$500 limit was not in force in the month of January, February, March and April of 1908.

A. As far as I know, it was always in force.

Q. It was in force in 1908 as well as in 1909, 10 and 11?

(Testimony of Edwin F. Meyer.)

A. I think that is the statutory limitation.

Q. Yes, sir. As a matter of fact, I think it was passed in 1907, but it was in force in 1908 at least.

Mr. SHIPLEY.—I think the question in your mind is when the “L” requisition came in.

Mr. ALLEN.—Yes. I didn’t want any confusion in the minds of the jury.

Q. In other words, in the fall of 1908, as well as 1907, the same law was then in force which limited the power of the local Storekeeper at Bremerton to purchase above the sum of \$500, so that in the event he wanted to purchase stock material in the open market he was then required to get the positive orders of the Secretary of the Navy; is not that true?

A. For anything over \$500; yes, sir.

Q. Yes, sir, that is as I so understand it. Some reference was made, Mr. Meyer, in your direct examination, to a requisition, a particular requisition, which was directed out of your office down through the medium of the Mare Island Navy Yard, and thereafter purchased, I think, in the markets of Seattle. As a matter of fact, wasn’t it true that after Mr. Spear came on the yard that many requisitions were routed in that way, because of Mr. Spear’s familiarity with the stock of the Mare Island Navy [1125—1073] Yard?

A. No, sir, that isn’t true in that sense.

Q. As a matter of fact, were not many of these requisitions routed in that way because of the fact he had come from the Mare Island Navy Yard and was more or less familiar with ~~their~~ stock?

(Testimony of Edwin F. Meyer.)

A. Not in that way, no, sir; it didn't occur in that way.

Q. What do you mean by that way?

A. Well, it was after the battleships were at the navy yard when we took up that matter, and, for the sake of expediting the receipt of stores on our requisitions we obtained the permission of the Bureau at Washington to route these requisitions by way of Mare Island.

Q. Mare Island Navy Yard is located very close to the city of San Francisco, is it not? A. Yes, sir.

Q. Within a few miles. When the fleet, Atlantic Squadron, battleship squadron, approached on this journey around the world it first touched in at the city of San Francisco, did it not?

A. I don't know whether it touched there or not.

Q. It came on up the coast, didn't it, Mr. Meyer, and that part of it which came to the city of Seattle returned again, then, to the city of San Francisco, which was the rendezvous of the entire fleet?

A. After they left here?

Q. They returned again to San Francisco, and there all of the ships assembled and proceeded from San Francisco to an Oriental cruise, isn't that true?

A. Around the world; yes, sir.

Q. So then any ship of the Atlantic Battleship Squadron which was a [1126—1074] part of that Atlantic Fleet would have three opportunities to obtain supplies after they left the harbor of Santiago. They would touch first at Mare Island on the way up, and touch the Puget Sound Navy Yard here, and re-

(Testimony of Edwin F. Meyer.)

touch the Mare Island Navy Yard before they started for the Orient.

A. That is only part true. If the navy yard ordered a ship furnished with supplies at Puget Sound it would be expected the supplies would be put on board here. If, however, by means of any exigency, we couldn't supply them here, they probably would take it on at San Francisco.

Q. Mr. Meyer, is not the course of a battleship in reference to supplies much like that of your own personal procedure in the purchase of groceries? If a battleship goes to one navy yard and there doesn't find the supplies, it can proceed, if that is but a few miles, proceed to the next navy yard and there take up the supplies it is unable to procure at the former yard?

A. You don't understand the military life.

Q. I have seen something of it personally.

A. No, sir, that isn't true. It is in some instances, as I explained. If the articles were not available here a special provision might be made for it to be put on board in San Francisco harbor, but that would involve quite a bit of routine work.

Q. Yes, sir. The point is this, Mr. Meyer. If the battleships which came into the Puget Sound harbor were unable to obtain 12 by 16 by $\frac{1}{2}$ inch zinc, and they were returning thereafter to San Francisco, and in near proximity to Mare Island Navy Yard, they could have there obtained, if there was a shortage here, they could have obtained whatever shortage

(Testimony of Edwin F. Meyer.)

they had here at the Mare Island Navy Yard?
[1127—1075]

A. Yes, they could have under those conditions, but the Puget Sound Navy Yard was directed to supply those items and we were not supposed to depend upon Mare Island to supply them.

Q. Something has been said in your direct examination with reference to the knowledge which was given to the community, and to your own intelligence as well, with regard to the movements of this Atlantic Battleship Squadron. Refreshing your recollection, I will ask you whether or not it was not known to you that the Atlantic Battleship Squadron would leave the Atlantic Coast a year before it actually left there?

A. Why, I think we had information some considerable time before. I don't know—

Q. Mr. Meyer, you read the Seattle daily papers, do you not? A. I do, sir.

Q. Do you read the Seattle "Post Intelligence"?

A. Yes, sir.

Q. Do you read the Seattle "Times"?

A. Yes, sir.

Q. Did you read the Seattle "Times" about the month of July, 1907, calling your attention to a particular item—

A. I can't say I did. I probably did.

Q. Step down here a moment, please. Calling your attention to an article of July 2d, 1907, published in the Seattle "Evening Times," under glaring headlines: "Big shoot. Pacific Fleet. Government

(Testimony of Edwin F. Meyer.)

prepares for war—”

A. As a matter of fact, the daily press gets information before we do. I probably had that information; I don't know; that has no bearing on this matter whatever.

Q. Well, that is a matter probably for us to determine, but, Mr. Meyer, you probably had that information at or about that time? [1128—1076]

A. I concede that I may have; I don't recall.

Q. And later, on July 5th, 1907, Mr. Meyer, I call your attention to this article in “The Times,” which confirms, or purports to confirm—will you kindly take a look at it, please?—which confirms, or purports to confirm, the intelligence of two days before. If you read the daily papers, those officials at Bremerton, as you were one, you probably had this information from a public source if you didn't have it from an official source; isn't that true?

A. Chances are I did.

Q. Now, I believe you stated in your direct examination that you received intelligence about the first of April as to the time when these ships would actually arrive in the Seattle Harbor; is that right?

A. Why, I can't say as to that; I didn't testify as to that.

Mr. MORRIS.—What ships do you refer to?

A. (Continuing.) The coming of the fleet here did not necessarily mean that the Puget Sound Navy Yard would outfit them. The Mare Island Navy Yard was the base of supplies.

Q. You were asked, as I understand, as to your

(Testimony of Edwin F. Meyer.)

knowledge of the movements of the ships of the Atlantic Battleship Squadron which would come to the harbor of Puget Sound, and I believe you stated that the intense activity which marked your yard really began on or about April 1st, that then you had definite knowledge as to when the ships would be in the harbor of Puget Sound?

A. As to the assembling of supplies for the battleships. That had reference to nothing else.

Q. As to the assembling?

A. As to the assembling of those ships.

Q. That was on or about April 1st? [1129—1077]

A. That was on or about April 1st we began the assembling of the supplies, yes, sir.

Q. As a matter of fact, isn't it true, Mr. Meyer, that as early as March 13th, 1908, you had, in the daily press of this paper, had positive and direct information as to what dates each of those ships would arrive on the harbors of Puget Sound, as early as March 13th? A. We may have, yes, sir.

Q. So, on April 1st,—I will call your attention first to this article in the paper and see if that refreshes your recollection, calling your attention to that part of—"The Battleships would remain in San Francisco until about May 22d," which is an article of March 13th, 1907. Your information was probably as complete as that of the public press, was it not, at that time?

A. The press would have the information, I think, in that particular before we got it.

Q. Probably you read all the matters in regard

(Testimony of Edwin F. Meyer.)

to the movement of that fleet? A. I assume I did.

Q. So your information was complete on March 13th, 1908, that the ships would leave San Francisco for Puget Sound on May 22d, 1908?

A. You can't regard the newspaper information as anything definite. Even though I had read that and had the information at the time, I wouldn't consider that as official; I would have to get the official information from the Navy Department.

Q. When did you get your official information, then?

A. The records would have to show that. I don't recall, Mr. Allen.

Q. I am asking you as to your personal recollection in regard to [1130—1078] it.

A. My personal recollection is it was about the time that I began the assembling of these stores, and the records show that was started some time about the first of April. For example, we have here a folder showing that steps were taken to procure provisions. Well, the provisions, I think, were about the first things that we tried to secure, that being an important element.

Q. Mr. Meyer, don't you know, and didn't you know, that Paymaster Spear came from Mare Island Navy Yard to take charge of the Storekeeper's Office at Bremerton for the very purpose of then beginning, in January, 1908, of preparing for the approach of this battleship fleet?

A. No, sir, I did not.

Q. You do not know that fact?

(Testimony of Edwin F. Meyer.)

A. I did not know it.

Q. You heard the statement of Paymaster Spear; he was sent here for that fact?

A. I heard him, but he did not tell me that at that time. In fact, the Paymaster that Paymaster Spear relieved was not very well and he was trying to get on the retired list.

Q. But you are telling the jury now you didn't know Paymaster Spear came there so as to meet the needs and requirements of the Atlantic Battleship Squadron?

A. No, sir, I didn't know that fact.

Q. As a matter of fact, the United States Government was, beginning prior to January 1st and continued down through January, February, March and April, and even into May, during all those months they were loading up supplies at the Puget Sound Navy Yard to supply that fleet, were they not?

A. Not that I am aware of, sir. [1131—1079]

Q. Didn't you begin to requisition for a full car of zinc way back in December, 1907, and wasn't that actually delivered on March 9th, in anticipation of this increased demand to be made on the Puget Sound Navy Yard?

A. You say increased demand. It was for the Pacific Fleet in December.

Q. (Question repeated.)

A. That is a double-barreled question. I know what the question is; there is no use to read it.

The COURT.—Read the question. (Question repeated.) What was your objection, Mr. Shipley,

(Testimony of Edwin F. Meyer.)

your suggestion in relation to this last question?

Mr. SHIPLEY.—The suggestion was this, your Honor: The counsel, up to this point, has been interrogating with reference to the Atlantic Fleet, as I understood the question. We desire to know if this last question is provisions made in anticipation of the Atlantic Fleet, or to conditions which were brought about also by the expected arrival of the Pacific Fleet?

The COURT.—Let the witness answer.

The COURT.—No, I think the witness would know, knowing of the conditions, he could say.

Mr. SHIPLEY.—Exception.

A. It was in anticipation of the arrival of the demands of the Pacific Fleet, not the arrival, because they were there at the time.

Mr. ALLEN.—Yes, you knew, and the public knew, way along in July, 1907, six months before this requisition started, knew that the Atlantic Battleship Squadron yourself would be in the port of Puget Sound in the coming spring and summer.

A. It didn't follow that the Puget Sound Navy Yard, with its [1132—1080] limited facilities, would take care of those ships. Mare Island was the base of supplies, and prior to that time we were all getting our supplies from Mare Island.

Q. You had as much definite knowledge of the movements of the Atlantic Battleship Squadron in December as you had of the Pacific Squadron, didn't you, at the same time?

A. The Pacific Squadron, for the most part, was

(Testimony of Edwin F. Meyer.)

at that time at the Puget Sound Navy Yard; could not have had as definite information, sir.

Q. And the Pacific Squadron got its supplies at Mare Island whilst here?

A. A great many supplies.

Q. And they could get zinc as well?

A. We had trouble of not furnishing them with zinc, and this requisition on the Bureau was initiated for the purpose of avoiding these numerous purchases in this local market.

Q. You could get zinc as well at the Mare Island Navy Yard as you could at the navy yard at Bremerton for the Pacific Fleet, couldn't you?

A. The zinc manufacturers are in the middle west, and it could be obtained from these people at Puget Sound as readily as it could be obtained at Mare Island. Prior to this time the zincs were shipped to Mare Island and shipped up from Mare Island to Puget Sound with increased freight.

Mr. ALLEN.—Mr. Meyer, you did start a requisition, then, in December, 1907, for a full car of zinc, and you then estimated the price at 10 cents a pound, didn't you? A. I did, sir.

Q. And if you had looked up the market at that time you would have found that zinc was quoted and sold by Matheson & Heggler [1133—1081] people at eight cents a pound in August or September of that same year, wouldn't you?

A. You understand that I wasn't concerned with the price paid. The quantity of supplies is the thing that concerned me at that time.

(Testimony of Edwin F. Meyer.)

Q. You weren't concerned, then, in December, with the price to be paid at all? A. No, sir.

Q. To your mind it doesn't make any difference whether you put ten cents on it or twelve or fourteen? A. Absolutely no difference.

Q. You thought you were performing your service to the Government if you made an estimate of sixteen cents as well as if you had made an estimate of ten? A. Yes, sir, I think that is right.

Q. When you were placed there to make these estimates for the United States Government you thought you were doing your duty if you said 16 cents instead of ten; is that right?

A. As far as the purposes were concerned, it would serve the same purpose.

A. This purchase is made by the Navy Department at Washington, D. C. Their offices are of very high rank in the navy, bonded, and they are the people who are interested in the purchase. I had absolutely nothing to do with that, I had only to do with the quantity.

Q. But you have already testified, and so have other witnesses here, and it is one of the indisputable facts of this case, that if you fixed a certain estimated value they would not exceed that except by ten per cent. Then if you had fixed ten cents a pound upon the requisition of April 1st, 1908, they [1134—1082] wouldn't have sold this zinc to the Government at twelve forty-five, would they?

A. If the estimate had been placed at a dollar a pound the Purchasing Pay Office was charged with

(Testimony of Edwin F. Meyer.)

the purchase of that at the lowest figure. I had absolutely nothing to do with that.

Q. Read him the question. I want you to answer my question.

(Question repeated.)

Mr. MORRIS.—Object to the question, may it please your Honor, on the ground it contains a statement which is alleged to be a fact, which is not borne out by the record in this case. The undisputed facts in this case show just the reverse, and it is argumentative, and we move to strike the questions from the record.

The COURT.—I think the first part of that question should be eliminated, as to the undisputed facts.

Mr. ALLEN.—Well, that was an explanation. Read the latter part of the question.

Mr. MORRIS.—We further object to the question on the ground it simply calls for a conclusion of this witness.

The COURT.—Yes, but then this is cross-examination, and he can answer that.

Mr. MORRIS.—Exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. They could sell zinc to the Government at any price they wanted.

Q. If they did exceed this ten per cent they would then exceed the other limit placed upon their action above your estimate; isn't that true?

A. The article could be purchased by authority of the Navy Department at any price irrespective of

(Testimony of Edwin F. Meyer.)

the estimate, sir. [1135—1083]

Q. You have testified heretofore, I now call your attention to it, have you not, or have you not heretofore testified that it was the rule and custom to never exceed, except a possible limit of ten per cent above the estimated price which you placed upon the proposed purchases?

A. Yes, sir, that is as a guide to the accountant.

Q. As a guide to the accounting system?

A. Yes, sir.

Q. And wasn't it a guide to the Purchasing Pay Officer?

A. No, sir, it was not a guide to the Purchasing Pay Officer.

Q. You mean to say he wasn't limited?

A. As to his purchase, he could purchase it at the lowest possible price in the market.

Q. You mean to say the Purchasing Pay Officer in Seattle, who purchased this material, didn't use the figure which you set there on the face of the requisition as a guide to direct and control his action in purchasing that article?

A. No, sir, he should not.

Q. As a matter of practice, didn't he?

A. He should not; I don't know what his practice was.

Q. You don't know what his practice was.

A. I do know he was sent there to purchase it at any price which he sees fit.

Q. Your idea on all of these purchases was it didn't have any control on any of those?

(Testimony of Edwin F. Meyer.)

A. It was a guide to Washington, D. C., to see that it was limiting the Government's obligation.

Q. But it wasn't any check on the Government's purchases, and wasn't intended to be?

A. As a secondary matter, and for the purpose of the primary object, the Purchasing Pay Officer was not authorized to exceed it more [1136—1084] than ten per cent.

Q. Don't you know, as a matter of fact, if it exceeded ten per cent of the proposed purchase, it exceeded ten per cent, it was a rule and custom, and they followed it absolutely, they must take it up with the Paymaster at Bremerton before they purchased it, and don't you know that?

A. The Paymaster at Bremerton couldn't authorize it over ten per cent; it required the action of Washington, D. C.

Q. You answer my question.

Mr. SHIPLEY.—We submit the witness has a right to complete the answer.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. Not the Paymaster at Bremerton; the Bureau at Washington is the person to authorize that. And some Pay Officers hold that ten per cent is not binding upon that.

Q. I am asking you about the custom that was in force and effect in 1908, in the months of January, February, March and April.

A. Your first question was broader than that.

Q. I am confining it now to those four months, if

(Testimony of Edwin F. Meyer.)

you please to have it that way.

A. As you have it, not as I please to have it.

Q. I am now confining you to those four months, and state what the practice was.

A. The rule was in the Paymaster's Office at that time he would not exceed the estimated cost at more than ten per cent without authority from Washington, D. C.

Q. You have not stated whether he would consult the Paymaster at Bremerton?

A. When you refer to the Paymaster you refer to the Storekeeper? [1137—1085]

Q. I mean the Paymaster in charge of the Storekeeper's Office.

A. There is a Paymaster at Bremerton and also a Storekeeper.

Q. You understand exactly what I mean. I mean the Paymaster in charge of the Storekeeper's Office.

A. These papers—when an estimate is exceeded these papers are referred to Washington, D. C., frequently via the Storekeeper for recommendation; I think in most instances by way of the Storekeeper for recommendation—

Q. Frequently—

Mr. MORRIS.—Let him answer.

A. (Continuing.) The Storekeeper could not authorize it. He could suggest or recommend to the Department at Washington that the estimate be exceeded. In those cases they are always called upon to make an explanation why the estimate was not placed high enough, therefore I aim to make the

(Testimony of Edwin F. Meyer.)

estimate in all cases sufficiently high to preclude the possibility of a call-down for having made a low estimate.

Mr. ALLEN.—I now understand from your explanation that then it was the practice and procedure for this matter, when it exceeds ten per cent, to immediately be referred, by way of the Bremerton Office, to the officers at Washington?

A. Yes, sir.

Q. For some explanation? A. Yes, sir.

Q. In other words, they did consider it as a serious matter if this purchase was made in excess of ten per cent of your estimated price?

A. Considered it a serious matter if I underestimated the cost.

Q. They considered it so serious a matter that the purchase of that supply was immediately stopped, when it exceeded ten per cent, [1138—1086] until it had gone through the navy channels, through the Bremerton office and back to Washington?

A. Naturally they wouldn't exceed the amount appropriated by the authorities at Washington.

Q. So your estimate placed upon that requisition did have a great deal of value for some officer over here in the city of Seattle, didn't it?

A. Only as far as a limitation; he couldn't exceed it. It was his duty to buy it, after competition; at the lowest price, and in that I had absolutely no concern at all.

Q. You were at one time enough interested in a form of complaint, I believe, made by the Great

(Testimony of Edwin F. Meyer.)

Western Smelting & Refining Company, to your office in regard to the scales in use in the metal storehouse. I believe you stated that you went down and saw Mr. Lockwood in regard to the proper condition of his scales, did you?

A. I did, yes, sir. I recall having—

Q. And you told him that you thought probably his scales were wrong on this occasion, as I understand it?

A. Well, I don't know whether in those words.

Q. But in effect?

A. But I questioned whether or not the scales were—

Q. You questioned the accuracy. Can you give the name of any other merchant in the city of Seattle for whom you went to Mr. Lockwood in regard to the condition of his scales during this period of 1908?

A. Well, this was a condition existing about that time. Now, I recall several shortages. We were not receiving very many materials or shipments from Seattle people; our shipments were principally from the east, and if you will investigate the [1139—1087] records about that time you will find that a large number of shortages occurred.

Q. Mr. Meyer, you probably didn't understand me. I asked you if you would give me the name of one other merchant on whose complaint you went and jacked up Mr. Lockwood about the condition of those scales other than the complaint from the Great Western Smelting & Refining Company. Name one or two so we will see.

(Testimony of Edwin F. Meyer.)

A. Well, I don't recall any just now.

Q. You don't recall any at this time? A. No.

Q. I thought not.

A. I might, by referring to the records, find a number of shortages.

Q. To what other merchants in the city of Seattle did you ever write on any occasion a letter on which you signed the name of Ray Spear, Paymaster of the United States Navy?

A. Why, I wrote to any number of people.

Q. Name a few of them.

A. Well, Mr. Allen, you understand that there are days over there when you have a large number of letters forwarded, and if Paymaster Spear at that time happened to be out of the office, and the matters were immaterial, I made it a rule to send the correspondence out without holding it up.

Q. Now, you testified in your direct examination, and you now reiterate it, you made it a rule, it was a custom, then, to sign the name of Paymaster Spear, his name written out, to communications emanating from your office and directed to merchants of Seattle or elsewhere. Name one or two or three merchants in this city to whom you addressed epistles of that kind with the signature of Ray Spear attached to them.

A. This was five years ago, and those things were mere routine; [1140—1088] I can't remember as far back as that. The original correspondence would be in the files of these various dealers.

Q. Can you go through these files and find any let-

(Testimony of Edwin F. Meyer.)

ters in which the signature of Ray Spear is attached written by you except one of them?

A. In none of them I find in these. These were brought in court by Mr. Goldberg. The files do not show them, they are blank always.

Q. I was asking you to help us in our investigation of what merchant you might, on some other occasion, other than the Great Western—a letter to which you signed the name of Ray Spear.

A. You would have to find the files of the merchants about that time. I think you will find that any letter that was dated in the Storekeeper's Office about the same day that this letter was dated, you will find that all such letters, perfunctory, just merely routine letters, you will find them signed in exactly the same way.

Mr. ALLEN.—As a matter of fact, you didn't write this letter to Mr. Jimmie Goldberg to show him how strong you were over in the office?

A. I don't know Mr. Jimmie Goldberg, and furthermore, he wouldn't know whether that was the Storekeeper's signature or I wrote it.

Q. If a man who did business with you and was accustomed to see this "M" with a cross across it that way, he would likely know who wrote it?

A. He was in the office enough to know who wrote all the letters there. He was frequently in the office conferring with Paymaster Spear and conferring with me.

Q. When do you claim Mr. Spear objected to you using his name that way? [1141—1089]

(Testimony of Edwin F. Meyer.)

A. I don't claim he objected to that at all.

Q. *Do claim* Mr. Spear, who is sitting here in front of you, had any *know* of that until the other day here in court? A. I don't know.

Q. You never told him about that?

A. It wasn't necessary; it was a matter of routine in the office.

Q. Don't you know, as a matter of routine in the office, it was your duty to sign your name as Principal Clerk?

A. I never have, in my sixteen years with the Government, never signed my name as Principal Clerk.

Q. Don't you know it is a custom, when you use the name of Paymaster, to use a rubber stamp which didn't have it written out?

A. If I had a rubber stamp of his name I probably put it on there, but a rubber stamp wouldn't serve any more purpose than writing it in there with my initial after it.

Mr. ALLEN.—Calling your attention to Plaintiff's Exhibit Number "102" and plaintiff's exhibit—

The COURT.—There is no Plaintiff's Exhibit "102."

Mr. ALLEN.—That is right. Plaintiff's Exhibit "35," the Lyman-Evans transaction, to which reference has been made. Take a look at all of those three folders. This is requisition of January 2d, 1910, that is the date, is it not, Mr. Meyer?

A. January 20th.

Q. January 20th, 1910. This is requisition for ferromanganese to a certain Lyman-Evans concern;

(Testimony of Edwin F. Meyer.)

is that true? A. Yes, sir.

Q. What is the amount of the original requisition?

A. \$500.

Q. What is the number of pounds called for?

[1142—1090] A. 4,000 pounds.

Q. 4,000 pounds of ferromanganese. What is the comparative date of the requisition for 4,500 pounds of ferromanganese which follows immediately thereafter? A. No requisition for 2,500.

Q. 4,500 or 4,000, the second requisition for 4,000?

A. March 19, 1910.

Q. March 19, 1910. That is two months thereafter. Each of those is for 4,000 pounds; is it not?

A. Yes, sir.

Q. You heard the testimony of Mr. Kettlewell in this case to the effect that you and he went down by the telegraph office and he sent a telegram to a concern in the east with reference to the cost of this ferromanganese, did you not?

A. I heard his testimony.

Mr. MORRIS.—We object to that testimony. To my recollection there is no such evidence in this case.

Mr. RIDDELL.—The witness has already answered that there was.

Mr. MORRIS.—We move to strike the answer.

Mr. ALLEN.—Did you hear that?

A. I imagine he did; I imagine he testified to anything you said he did, and if you said he did, he did.

Q. That is quite a compliment to my memory. As a matter of fact, did you hear that statement by Mr. Kettlewell or not?

(Testimony of Edwin F. Meyer.)

A. Mr. Morris said it wasn't said.

Q. I am asking you about your good memory, Mr. Meyer.

A. It creates a doubt in my mind now whether I heard it or not.

Q. Well, did you think you heard it?

A. I thought I heard it; yes, sir.

Q. Well, if Mr. Kettlewell then testified that he and you went [1143—1091] down by the telegraph office, and a telegram was sent to an eastern concern, a few days after the original award was made to this Lyman-Evans & Company, then if there was not a Lyman-Evans & Company in St. Louis—if there was a Lyman-Evans Company in St. Louis you would naturally, by means of correspondence, keep in touch with them through the course of this transaction, would you not?

Mr. SHIPLEY.—We object to the question as not a fair question. It is assuming that the statement that Kettlewell made was true and that this witness admits the statement to be true. The question is based on "Did you hear the evidence of Mr. Kettlewell." Now, this witness may say that evidence is false, so you can't assume the truthfulness of Kettlewell's testimony in this case and then base on that a question, if you heard Mr. Kettlewell then such and such fact must have resulted.

The COURT.—I think the question as it is propounded now should be answered. He may answer. Note an exception. There was no assumption there.

Q. I will call your attention to this fact, then, that

(Testimony of Edwin F. Meyer.)

after the original requisition was made and the delivery was made, I will ask you to ascertain from those records the number of pounds of ferromanganese that was delivered to the navy yard at Bremerton.

A. Why, I remember that transaction very well.

Q. You do?

A. Yes, sir. It was gone into very fully at the last trial.

Q. Yes.

A. 4,350 pounds on one and 4,400 on another, making a total of 8,750 pounds.

Q. Referring to the date of the delivery of the original requisition, which started on January 20th, 1910, I will ask you [1144—1092] whether it isn't the fact that you started a second requisition for 4,000 pounds of ferromanganese before that first requisition was delivered? A. Yes, sir.

Q. Taking, now, requisition number 193, plaintiff's exhibit—you started on January 4th, 1907, a requisition which was known as requisition number 193, a requisition for 4,000 pounds of zinc plate of the size of 12 by 1½ by 6 inches? A. Yes, sir.

Q. You testified that you prepared that requisition?

A. No, I wouldn't say I prepared it. It was prepared in the Storekeeper's Office.

Q. Well, you caused it to be prepared, I believe you stated? A. Yes, sir.

Q. And the estimated price there is 12 cents?

A. 12 cents.

Q. That was furnished by you, I believe you stated.

(Testimony of Edwin F. Meyer.)

I call your attention to the letter first ascertained in that folder, the time of the delivery of this 4,000 pounds of zinc. What is the exhibit number, Mr. Meyer, on the back of that, if you please?

A. "17" is one and "18" the other. They both pertain to 193.

Mr. SHIPLEY.—One is the Storekeeper's folder and the other is the navy pay?

Mr. ALLEN.—Yes.

A. What was the requisition, please?

Q. (Question repeated.)

A. December 14th, 1907.

Mr. MORRIS.—Which folder, Mr. Meyer?

A. That is shown in this yard folder "17."
[1145—1093]

Mr. ALLEN.—The amount of the requisition was 4,000 pounds. State from the folder what was the amount delivered. A. 5,930 pounds.

Q. That is an excess delivery of 1,933 pounds, or nearly 50 per cent, isn't it, Mr. Meyer?

A. Yes, sir.

Q. There was then an inspection of this delivery, was there not?

A. Yes, sir, an inspection was called and sent to the Board of Inspection.

Q. I will call your attention to a letter, which is a part of the files of that case, written from Paymaster Orr's office in the city of Seattle. Tell the jury the exact procedure of that letter. To whom is it addressed?

A. Well, you jump from the Inspection Call to the

(Testimony of Edwin F. Meyer.)

letter. Do you want me to follow it up or—

Q. You tell me about the letter.

A. The letter is dated January 11th, 1908. It is written by the Purchasing Pay Officer, Seattle, to the Commandant of the navy yard.

Q. To the Commandant of the navy yard. Forwarded through his office, then, is that right?

A. Yes, sir.

Q. That was referred then to whom?

A. To the Storekeeper.

Q. That is, Mr. Spear's Office?

A. Yes, sir, by the Storekeeper to the Board of Inspection.

Q. In this letter the office at Seattle protests against the purchase of this material at this exorbitant price; isn't that true?

A. No, sir. [1146—1094]

Q. Read the letter to the jury, then.

A. (Reading:) I have the honor to return herewith General Storekeeper's voucher number 506, dated January 7th, 1908, in favor of the Great Western Smelting & Refining Company, in payment for 5,933 pounds of zinc plates, delivered under Naval Supply Fund requisition number 193, inviting attention to the fact that this office placed an order for but 4,000 pounds of zinc plates under this requisition. This was an emergency purchase for immediate delivery, a part of the material being shipped by express, the contractor informed me at the time, and consequently the price was abnormally high.

It would therefore appear, in accepting more than

(Testimony of Edwin F. Meyer.)

4,000 pounds, the Government will pay an excessive price for the over-delivery. Very respectfully, Robert H. Orr, Paymaster U. S. N. Addressed to the Commandant.

Q. After that reached the Commandant's office this complaint, then, which emanated from Mr. Orr's office down here, that was then referred to Mr. Spear's office and passed to your hands; is that right? A. Yes, sir.

Q. And calling your attention to a certain endorsement, the endorsement of Mr. Ray Spear. Read the endorsement to the jury, will you please?

A. (Reading:) Number 193 N. S. F., 1908, first endorsement January 13th, 1908. Subject: Purchasing Pay Officer, Seattle, Washington. Relative to excess delivery of zinc plates under Naval Supply Requisition 195. Respectfully referred to the Board of Inspection, inviting attention to attached letter.

In view of the condition herein mentioned this office suggests [1147—1095] that the material referred to be reinspected in order that the excess delivery be rejected and returned to the contractor. Ray Spear, Paymaster, U. S. Navy, General Storekeeper.

Q. Mr. Spear was then recommending back through the Commandant's office that this excess delivery of 1,933 pounds be rejected and returned?

A. Because delivery had been previously accepted by the Board of Inspection, yes, sir.

Q. And he is recommending that be returned to the sender or to the consignor; is that right?

A. Recommended its rejection. Doesn't say

(Testimony of Edwin F. Meyer.)

anything about its return.

Q. Says "rejected and returned to the contractor"? A. Yes, sir, I see that.

Q. Then it went to the Inspector, didn't it?

A. Yes, sir.

Q. And I will call your attention to his recommendation in the matter. Read it to the jury.

A. (Reading:) It is recommended that a call be issued for reinspection of the material passed on Call number 1124 with the rejection and return to contractor of amount in excess of 4,000 pounds. C. H. Hayes, Lieutenant-Commander U. S. Navy.

Q. This Inspecting Officer then said to return this 1,933 pounds?

A. The Inspecting Officer did not have anything to do with the return. That was the Storekeeper's affair.

Q. The Storekeeper had recommended it and the Inspector said to return it?

A. I wrote this letter for the Storekeeper, having in mind the rejection of the material and the return.

Q. I see. But then you and Mr. Spear agreed this should be returned; [1148—1096] is that right?

A. Well, it seems so from here.

Q. And then the inspector says "returned," doesn't he?

A. Yes, sir. The inspector, however,—his function is inspection and not with the Storekeeper—

Q. Tell the jury why that letter never went back with this endorsement to the Commandant of the yard, where it belongs?

(Testimony of Edwin F. Meyer.)

A. For the reason we took action—after the Board recommended this, this letter was turned over to the Inspection Call Clerk in the office, who prepared a new Inspection Call in conformity with this third endorsement. He recommended that a Call be issued. The Inspection Call Clerk thereupon prepared a new Inspection Call, and the papers were left in the folder.

Mr. ALLEN.—I will ask another question.

Q. In naval procedure, when that had passed through the Commandant's Office and he makes a note to the effect this communication was received, shouldn't that have gone back, then, to the Commandant for his information so he would know what action had been taken in this matter?

A. No, not according to the conditions existing. Now, he merely—

Q. What do you mean by that—

Mr. MORRIS.—Let him finish.

Q. At that time. He keyed this to the Storekeeper. If he said "Return papers" it would be a different matter, but the key just shows it was routed via his office. He doesn't ask for a report on this.

Mr. ALLEN.—Doesn't that endorsement show it was started and referred back to the Commandant, Hayes; endorsement?

A. Well, it does show "Respectfully returned to the Commandant."

Q. It never reached the Commandant, did it?
[1149—1097]

A. Well, it did not apparently here. It may have.

(Testimony of Edwin F. Meyer.)

It is in the files of the Storekeeper.

Q. In other words, here the responsible officers do report and reject and order returned 1,933 pounds of Great Western zinc of the size 12 by 6 by 1½ inch, don't they?

A. The responsible officers here didn't have anything to do, as I stated, with the return of that zinc. That was a function of the Storekeeper's Office.

Q. They ordered that to be done, and Mr. Spear ordered it to be done?

A. Mr. Spear signed the paper here which I prepared.

Q. Now, tell the jury why didn't that 1,933 pounds of zinc go back to Goldberg's concern.

A. For the reason that it was on the navy yard; it was an article that was constantly being called for; we had had considerable trouble getting zincs for ships *proper* to that time, and 1,933 pounds, more or less, wouldn't make any difference; in fact, we wanted the zinc; therefore a requisition was issued in the Storekeeper's Office for that 1,933 pounds of zinc that was on the navy yard. It was a perfectly proper procedure under the circumstances.

Q. I see. After these officers and the Commandant had even inquired into it, and after these responsible officers had said this is rejected and is to be returned, you said we needed the zinc and left it stay there? A. No, sir, that isn't the idea at all.

Q. It did actually stay there, didn't it?

A. It did actually stay there.

Q. How do you know it did, as a matter of fact?

(Testimony of Edwin F. Meyer.)

A. Well, the records show that it did, and the fact a requisition [1150—1098] was submitted to cover it.

Q. Well, thereafter, then, with this 1,933 pounds of zinc lying down there, when was this matter next called to your attention that it was still there?

A. Some time previous to the preparation of that requisition.

Q. Who called the matter to your attention?

A. I don't recall now. It was a matter of routine of the office, the fact it was there and not taken away.

Q. As a matter of fact, wasn't it lodged in your rather retentive memory that 1,933 pounds of Goldberg's zinc was down there?

A. I said it never occurred to me.

Q. Mr. Goldberg didn't tell you that?

A. It never occurred to me that way. I had no information at that time it was there until I got it evidently from some one else. These are matters of routine.

Q. I understand. But, at any rate, these 1,933 pounds, or fifty per cent excess, that had been rejected, lay there until March, 1908, and then you started another requisition to take up the excess?

A. Not another requisition. I started a requisition to take up the excess.

Q. That is requisition 157? A. Yes, sir.

Q. And it makes the personal request Mr. Goldberg be allowed to bid?

A. Yes, sir. That calls attention to the fact this zinc was on the navy yard, was rejected from the

(Testimony of Edwin F. Meyer.)

Great Western Smelting & Refining Company, and—

Q. You seem to have a good bit of information—

Mr. MORRIS.—Let him finish his answer.

A. I get that from the face of the requisition.

[1151—1099]

Mr. ALLEN.—You had a good deal of interest in Mr. Goldberg?

A. No, sir, it was a matter of Government business.

Mr. ALLEN.—Have you any further answer you want to make?

A. (Answer repeated.) And it could be used at the navy yard and requested Washington to give these people an opportunity to bid, along with other people; not the stuff be bought from them without competition, but they be given an opportunity to bid, and if they were the low bidders and this material would be accepted. But Washington pays no attention to that recommendation, but directs the Purchasing Pay Office to buy it without competition.

Q. And that requisition referred to it, if I am not right—that requisition, then, was started by you on March 6th, 1908; is that right? A. Yes, sir.

Q. Calling your attention to Plaintiff's Exhibit Number "3," I will call your attention to this shipment of zinc, a full car of zinc which started back in December, and which was then on the way for delivery to your office, and reached there, or to your yard, and reached there on the 9th day of March, 1908. I will ask you whether or not you didn't have then in your office before you this bill of lading showing the shipment long prior thereto, and that there

(Testimony of Edwin F. Meyer.)

was then on the way to your yard a full car of zinc weighing 50,000 pounds?

A. This bill of lading shows the receipt in the General Storekeeper's Office, this receipt (showing), on the 29th of February.

Q. 29th of February? A. Yes, sir.

Q. Then on the 29th of February you had before you the bill of lading there was then shipped and en route a full car of [1152—1100] zinc of this identical size, weighing 50,000 pounds?

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants, Edwin F. Meyer and Emar Goldberg. Vol. 7, pages 946 to 1100. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [1153]

A. This was in the files of the Storekeeper's Office.

Q. Passed right through your hands, didn't it, Mr. Meyer?

A. Well, it may have at that time; I don't know; it was available.

Q. It was available?

A. It was available, yes, sir.

Q. And that information went right through your hands in the regular procedure of the office?

A. There were thousands of such papers at that time.

Q. Look at the bill of lading. Thousands of such papers? A. Yes, sir.

Mr. ALLEN.—Very well. Calling your attention to the bill of the Illinois Zinc Company (handing

(Testimony of Edwin F. Meyer.)

paper to witness). Are those your figures?

A. 8,318, yes.

Q. So that passed through your hands, then?

A. That particular paper did, yes, sir.

Q. So you had that information before you, didn't you, Mr. Meyer?

A. Mr. Allen, you understand the routine in the office?

Q. Yes, I understand the routine in the office.

A. About that time there were thousands of these papers, and whenever one would come over the desk we would mark it filed and give it to a clerk whose duty it was to file it.

Q. How did you know, on March 8th, 1908, the United States Government needed 1,933 pounds of zinc?

A. The zinc was in constant demand. I knew that as I knew other things.

Q. Yes. How did you know that a little supply of that kind would be of any particular value to the United States Government? Did [1154—1101] you know the condition of the zinc in the storehouse at that time?

A. Why, the records would show here.

Q. I am asking you what you knew. Did you know the condition of zinc in the storehouse at that time?

A. I probably did.

Q. Now, did you or did you not?

A. Why, I must have investigated at the time.

Q. Will you say you did investigate it?

A. I won't say that I did or did not, but, in the

(Testimony of Edwin F. Meyer.)

ordinary course, I may have.

Q. Did you go to the warehouse card and look at that to see how much zinc was on hand on this occasion?

A. I may have. I doubt very much whether I would in the case of an excess delivery.

Q. You don't claim to know at this time whether you had on hand on March 9th any considerable amount of zinc or not? A. No, sir, I don't.

Q. And yet you are willing to start an excess delivery for Mr. Goldberg governing this 1,933 pound excess?

A. I did not start the excess for Mr. Goldberg.

Q. Excess requisition?

A. The excess was on the yard, and my experience with the Government has been it doesn't exact from the merchants in the country, want anything for nothing; that where it is reasonable the Government meets them halfway and is willing to do the right thing by them.

Q. Now, name one or two concerns in the city of Seattle, reputable concerns, for whom you made excess requisitions for excess deliveries of 50 per cent or better in the year 1908, for whom you prepared excess requisitions, except the Great Western [1155—1102] Smelting & Refining Company or W. A. Corder.

A. If I could carry in my mind these multitudinous things you are asking me I would be a wonderful man indeed. It is simply a physical impossibility.

(Testimony of Edwin F. Meyer.)

Q. But you will tell this jury at this time—

A. The records show this. I wouldn't have remembered it if the records had not been produced here.

Q. Do I understand you to say definitely and finally you can name one or can't, which is it?

A. At that particular period I don't think I can. And I do know that requisitions have been submitted at different times for excess material delivery by other contractors, even contractors as far back as the east.

Q. I conclude, Mr. Meyer, from this somewhat lengthy statement, that you can't at this time name one; is that right?

A. I just said that I could not.

Q. You could not. Very well, sir. Mr. Meyer, quite a bit was said by you in your direct examination with regard to this card, and some possible or probable error that might have occurred with reference to checking this zinc up. Would your judgment as to the quantity of zinc in the warehouse be as good as that of Mr. Lockwood, the man charged with the responsibility of keeping tab and check on the amount of the zinc there?

A. I don't understand what you mean. My judgment as to the quantity?

Q. Yes.

A. It wouldn't be a question of judgment; it would be a question of fact, actual weight of the stuff.

Q. Mr. Lockwood was charged with the responsibility of keeping check and tab on the weight of

(Testimony of Edwin F. Meyer.)

the zinc kept in his warehouse, wasn't [1156—1103] he? A. He was supposed to, yes, sir.

Q. He was supposed to, and he kept this card there to show at all times during the period covered by it the quantity of zinc then on hand; isn't that true?

A. Yes, sir.

Q. If there had been a 15,000-pound delivery to any ship, either at or before April 1st, 1908, Lockwood, of all men in the United States service at Bremerton, would be the man to know that fact?

A. I think he should know it.

Q. You think he should know it? A. Yes, sir.

Q. You were asked the other day with regard to some deliveries of August and July, and along the latter part of the year after April 1st, 1908. Could this requisition, of which you then knew nothing, have been a matter of information to you as regards April 1st, 1908?

A. No, sir, they were merely mentioned as requisitions on which was a call on the Storekeeper for same, not—

Q. Something was said about the "Buffalo," I believe it was, a requisition started in December, 1907, and that was actually the zinc delivered to the navy yard in January sometime, or latter part of December, and which you claim does not show on this card?

A. I don't claim it wasn't shown there, sir.

Q. Well, your counsel asked you whether it was shown there.

A. I probably stated it wasn't from the card.

Q. Mr. Meyer, if it were delivered on December

(Testimony of Edwin F. Meyer.)

25th or 6th or 7th or 8th, it wouldn't be shown on that card anyway, would it? [1157—1104]

A. Will you please let me see the card?

Q. The date of this card is from December 30th (showing).

A. This card was prepared on the 31st of December.

Q. If it was delivered before that it wouldn't show on that at all?

A. No, but the previous card would show it.

Q. Yes, but unfortunately we can't find it.

Mr. ALLEN.—Mr. Meyer, what was your compensation as Principal Clerk at the navy yard in Bremerton in the year 1908, April?

A. It was \$5.04 cents per diem.

Q. It was about \$125 a month, wasn't it?

A. Over that; about sixteen hundred a year, something like that.

Q. You stated the other day that you did not look at this card when you made your requisition for 50,000 pounds of zinc, but you are not sure whether you did look at the card or did not look at the card when you made a requisition for 1,933 pounds of zinc to take up the excess delivery of Mr. Goldberg's zinc?

A. I probably did not. I would not in that case, knowing so well that zinc was an article in constant demand and we had considerable difficulty in getting it proper to that time.

Q. And somebody friendly to Mr. Goldberg told you he had a ton of zinc lying down there?

A. No, sir; no one friendly to Mr. Goldberg said

(Testimony of Edwin F. Meyer.)

anything to me about it that I know of.

Q. How did it happen to strike your mind on this date, then?

A. Well, the various men around the navy yard are required to report to the office from time to time things that are in the navy yard that are not taken into stock.

Q. Did Mr. Lockwood report to you this 1,933 pounds? A. I can't say that he did.

Q. You can't say that he did and you can't say that he did not; is [1158—1105] that the idea?

A. No.

Q. At this time you haven't any other explanation of that? A. He may have reported that.

Q. At this time you haven't any other explanation for your interest in Mr. Goldberg's concern, except the one you have given?

A. Well, I had no interest in his concern, and as will be shown by the preparation of that requisition. The material was originally purchased from him at sixteen cents. In preparing the requisition I made the estimate only twelve cents, four cents less.

Q. And yet you can't tell the name of another merchant in Seattle during 1908 for whom you prepared—

A. I obtained this information from the records and not from memory.

Mr. ALLEN.—I don't want to tire this jury or the Court, and I don't want to tire myself and yourself, but I want you to place your finger on the particular part of that card which you contend is wrong.

(Testimony of Edwin F. Meyer.)

The COURT.—Showing the witness what?

Mr. ALLEN.—Plaintiff's Exhibit "8."

A. I don't know that any particular part of it is wrong. I asked for certain ships' requisitions covering a certain period, that being the original record. I made a compilation from the calls on the Storekeeper, and I found that there was a call for an aggregate of over 90,000 pounds of zinc during the period, approximately this period when this card shows an expenditure of about 50,000 pounds.

Q. Are you trying to tell the jury now it was your ordinary procedure that you would go and make a compilation of requisitions that were scattered through the files or would you go out [1159—1106] to the man who knew the amount of stock and take a look at the card?

A. Why, I am telling the gentlemen of the jury that I made this compilation for the purpose of presenting it to them. I have it here now, as shown by the records. I made no such compilation at that time; it wasn't necessary. I made this requisition anticipating these calls, and, as shown by the records which were brought into court, my anticipation was pretty nearly correct.

Q. Calling your attention to the St. Louis requisition, the same being stamped as Defendants' Exhibit "Y," which is the ship "St. Louis," I will ask you what is the amount of the requisition there.

A. 4,000 pounds.

Q. Does it show on this card, is it properly entered on this card?

(Testimony of Edwin F. Meyer.)

Mr. MORRIS.—I submit, may it please the Court, my memory is there were three requisitions on that card and it has already been compared and admitted in evidence in the presence of this jury.

Mr. ALLEN.—If you will concede this card is right we won't take the time. I want the jury to know it is right.

The WITNESS.—Take the compilation; that is right.

Mr. MORRIS.—We never questioned the truthfulness of the card.

The COURT.—What is the objection?

Mr. MORRIS.—I was suggesting, may it please the Court, that counsel seems to misunderstand the witness. We are not questioning the accuracy of that card so far as it goes as to the delivery, but we are questioning it as to the amount compared with the requisitions that came from the ships calling for material, and Mr. Allen is trying to confuse our position with his.

Mr. RIDDELL.—Do I understand, then, you admit that card accurately [1160—1107] shows the amount of delivery to the ships during the period covered by the card?

Mr. MORRIS.—I don't think there is any question about it.

Mr. ALLEN.—This requisition is right, then, is it, Mr. Meyer, that checks with the delivery on the card?

A. This requisition checks with the delivery on the card.

(Testimony of Edwin F. Meyer.)

Q. That disposes of one.

A. If you wish to go all over it in this lengthy manner, I have compiled there a statement that might expedite the matter.

Q. If you will point out on that particular card where you say it is wrong then we will get to that point.

A. Now, here is the method that I pursued. I haven't checked over this card, don't know whether it is or is not, but we have in evidence here certain requisitions started in the Storekeeper's Office calling for boiler zincs. I have tabulated those items on there and Mr. Shipley has a copy of it, and it shows a total of about 93,000 pounds of zinc that was called for during this period.

Q. That includes 15,000 delivered to a ship that was wanting 1,500?

A. I don't say delivered to the ship, I say a call of the ship for 1,500.

Q. Take Defendant's Exhibit "A-4." What is the amount called for on that requisition?

A. One thousand pounds.

Q. Was that in fact delivered or—what is that, the "Buffalo" or "St. Louis"? A. "St. Louis."

Q. Was that in fact delivered as called for?

A. There is an item here of August 23d, I think, which corresponds to that. [1161—1108]

Q. That corresponds to it. Calling your attention to Plaintiff's Exhibit "V," I think it is, I will ask you what that requisition calls for?

A. It is for the "Washington."

(Testimony of Edwin F. Meyer.)

Q. What is the date of it incidentally?

A. June 14.

Q. 1908? A. 1908.

Q. Made long after this 50,000 pound requisition of yours started?

A. Well, a great number of these were made after, quite a few of them.

Q. I notice that.

A. In fact, most of them.

Q. They couldn't have possibly, then, afforded you any information or light on April 1st, 1908, could they?

A. It wasn't necessary; I was doing that in anticipation of the receipt of these requisitions.

Q. You were guessing, then, as late as September?

A. It was not guessing, it was a question of duty I had to perform to the Navy Department in making this anticipation. If I failed to do it this trial would not be necessary, I would probably have been out of a job long before this. It is 2,000 pounds.

Q. Is that all right?

A. July 22d, 2,000 pounds, requisition 75. I guess that is all right.

Q. Calling your attention to Defendants' Exhibit "A-10."

Mr. SHIPLEY.—What ship, please?

A. "St. Louis" again.

Mr. ALLEN.—September 20, 1908.

Mr. SHIPLEY.—That is September? [1162—1109]

Mr. ALLEN.—Yes, sir, September 20th.

(Testimony of Edwin F. Meyer.)

A. 1,500 here—1,500 pounds.

Q. What ship is that? A. "St. Louis."

Q. That is correct, is it? A. Yes.

Q. Calling your attention to Defendants' Exhibit "XX." A. That is the "Colorado."

Q. April 14, 1908? A. 6,000 pounds.

Q. Is that correctly shown on that card?

A. 6,000 pounds, yes, sir.

Q. That one is all right, then? A. Yes, sir.

Q. Calling your attention to Defendants' Exhibit "A-1," which is the—

A. 3,000 pounds, "Kearsarge."

Mr. SHIPLEY.—That is item 3.

A. Item 3, yes. For some reason or other—that isn't correct. The "Kearsarge" wanted 3,000 pounds and there is only a charge of 2,000 pounds.

Q. What is the number of the requisition? As a matter of fact, then, according to that, they took a thousand pounds less than the requisition called for?

A. Well, I don't know that they took a thousand pounds. That is, the record here shows a thousand pounds less.

Mr. SHIPLEY.—What does that invoice on the requisition of the ship show?

A. Shows the item delivered, 3,000 pounds.

Mr. ALLEN.—3,000 zincs. [1163—1110]

A. 3,000 pounds, please; there is the unit there.

Q. Now, you say there is a thousand pounds difference there. Defendants' Exhibit "9"—what is the date?

A. Date of March 9, 1908. This shows that the

(Testimony of Edwin F. Meyer.)

ship wanted 300 zinc plates.

Q. What is the total price, \$210?

A. Yes, sir. 300 zinc plates. I might say here that the price here has nothing to do with the issue of the material. The storeman who issues the material pays no attention to the price whatever. He is supposed to issue whatever is called for.

Q. I know, but if it was 15,000 of zinc, he wouldn't estimate it at two or three thousand dollars?

A. He wouldn't pay any attention to the estimated price; he would issue the material as called for.

Q. But if that said 1,500 pounds in here and he filled it out \$200, you would know that was not 15,000 pounds?

A. He would know there was an error some place and call the officer's attention to it.

Q. Is that right here (indicating)?

A. 300 plates were issued.

Mr. SHIPLEY.—Is that word "plates" on there or simply 300?

A. 300 plates, yes, sir, zinc. The "New Jersey," she got—

Mr. ALLEN.—Sometimes reads zinc and sometimes reads zinc plates.

A. Requisition 33. She got 29,070 pounds on this requisition for 300 plates.

Q. That checks all right?

A. I think that is about correct; yes, sir.

Q. I call your attention to Defendants' Exhibit—

A. "A-11."

Mr. SHIPLEY.—Mr. Allen, just let me suggest

(Testimony of Edwin F. Meyer.)

this. That was on the [1164—1111] “New Jersey,” also?

A. Yes, this is “New Jersey” also.

Mr. ALLEN.—Yes, “A-11.”

A. It is another instance where she called for 200 plates. That shows here as an expenditure of 2,080 pounds, over 2,000 pounds.

Q. You think that is about right?

A. I think that is about right.

Mr. SHIPLEY.—What is the language of the call?

A. Plates, zinc plates.

Mr. ALLEN.—Defendants’ Exhibit “A-8”?

A. Some of these requisitions have quite a number of items.

Mr. SHIPLEY.—If you will give me the name of the ship, I can give you the item.

Mr. ALLEN.—Ship “Tennessee,” cruiser.

Mr. SHIPLEY.—It is item 129.

A. This ship wanted 300 zines.

Mr. ALLEN.—How much did she get?

A. She got 2,000 pounds, according to the card.

Q. That is about right, then, isn’t it?

A. The other ship got 3,000; I guess that is about right.

Q. Calling your attention to Plaintiff’s Exhibit “A-5,” or Defendants’ Exhibit “A-5.”

Mr. SHIPLEY.—That is item 296.

Mr. ALLEN.—That is the “Charleston,” I believe.

A. This ship wanted 500 zines.

Q. What does the card show?

(Testimony of Edwin F. Meyer.)

A. That she was issued 4,800 pounds.

Q. That is approximately right? A. I think so.

Q. Calling your attention to Defendants' Exhibit "A-7." [1165—1112]

Mr. SHIPLEY.—That is item 19.

Mr. ALLEN.—That is the "Milwaukee." What is the date of that?

A. This ship wanted 1,000 zinc.

Q. This is October 1st, 1908. This is six months after, 1,000 zins. Couldn't have possibly had that in your head on April 1st, 1908?

A. There is no claim that I had that in my head.

The COURT.—A little louder.

A. I say, there is no claim here I had that in my head.

Mr. ALLEN.—See if that checks out, Mr. Meyer?

A. It shows the "Milwaukee" was issued 93,024 pounds.

Q. That is approximately right?

A. Approximately, yes.

Q. It might be 100 pounds one way or 100 the other? A. Yes.

Q. Calling your attention to Plaintiff's Exhibit "A-6," which is the "California."

Mr. SHIPLEY.—That is item 4.

A. 5,000 pounds of zinc.

Mr. ALLEN.—Check that on the card and see if that is right.

A. 5,000 pounds, yes, sir.

Q. That is correct. Calling your attention to De-

(Testimony of Edwin F. Meyer.)

Defendants' Exhibit "A-1," that is the ship "California."

Mr. SHIPLEY.—That is the 47th item.

A. Item 47, 8,000 pounds of zinc, "California."

Mr. ALLEN.—That check out all right?

A. That isn't on this card.

Q. What is the date of it, October or—

A. November 22d.

Q. It is after this card? [1166—1113]

A. Just a second. I will see when 47 was issued. That is issued December 19, date of delivery December 3d.

Mr. SHIPLEY.—Speak louder, Mr. Meyer.

A. That isn't on the card, 8,000 pounds.

Mr. ALLEN.—It is after this card, or issued prior to this card. It wouldn't show on this card, would it?

A. Well, it isn't shown on here.

Q. It would show on here, in the nature of things?

A. No, a previous card.

Q. So there is no error there, so far as you know?

A. I am not claiming an error; that isn't the point at all.

Q. What is this?

A. Defendants' Exhibit "A-3." This is a "Rhode Island" requisition.

Mr. SHIPLEY.—That is item 4.

A. She wants 2,000 zinc.

Mr. SHIPLEY.—What does the item call for? State what is in the item.

A. 2,000 zinc.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—How does it check out?

A. "Rhode Island," 2,080 pounds.

Q. That is approximately right, then, isn't it?

A. Approximately correct.

Q. Calling your attention to Defendants' Exhibit "A-2," which reads, "Zincs, boiler, 2500." See if that checks out.

A. You have got the invoice there. You want the requisition there, do you, or the invoice?

Q. Well, look at the invoice and look at the requisition.

Mr. SHIPLEY.—There are two items there, "69" and "70."

A. This ship wanted item 69, 5,000 pounds, and item 70, 2,500 pounds.

Q. Check that out on the card. [1167—1114]

A. It is February 26th. The only entry I find here is 1,800 pounds to the "Pennsylvania."

Mr. ALLEN.—What is the date of it?

A. February 26th, 1908.

Mr. SHIPLEY.—How much?

A. She wanted a total of 7,500 pounds.

Mr. SHIPLEY.—How much did she get, as shown by the card?

A. About—she got 1,804 pounds.

Mr. SHIPLEY.—How much?

A. 1,804 pounds.

Mr. ALLEN.—What is the number of that, 28? What are those items? (Examining same.) Well, those are 5,000 pounds of one inch zincs. They wouldn't be shown on here, naturally?

(Testimony of Edwin F. Meyer.)

A. Shows boiler zinc.

Q. Well, this is half inch zinc, 2,500 pounds of half inch zinc.

A. I don't think they have any card for one inch. All boiler zincs are half inch.

Q. You mean to say that would show one inch as well as half inch zincs?

A. No, that would show $1\frac{1}{2}$ by 6 by 12 intended for all boilers.

Q. They make a requisition for 5,000 pounds of half inch zinc and 2,500 pounds of one inch zinc, and they got—

A. 7,500 pounds. That doesn't fill this order here. (Indicating.)

Q. Well, approximately?

Mr. ALLEN.—That is "A-13," "Kearsarge" (exhibiting paper to witness). That is what you contend misled you by reading 1,500?

A. No, I said nothing about misleading.

Q. Well, it says 1,500, that, then, is the one the jury has seen.

A. Yes, that is the one the jury has seen, and calling for 1,500 zinc. [1168—1115]

Q. You claim that meant 15,000 pounds?

A. I don't claim anything of the kind. The thing is clear on the face, 1,500 zincs.

Q. They can figure out what is clear on the face of it as well as you can?

A. Yes, sir. Very clear to me from my experience, they mean 1,500 zincs, not pounds.

Q. That means 15,000 pounds. Did you ever know

(Testimony of Edwin F. Meyer.)

of an instance where they served a ship with 15,000 pounds of boiler plate?

A. My experience with the Puget Sound Navy Yard—

Q. Answer the question.

Mr. SHIPLEY.—Let him answer.

A. Take a vessel like the “California,” for instance—will you let me see the exhibit of the “California”?

Mr. ALLEN.—You answer it first.

Mr. SHIPLEY.—He has a right to answer that.

Mr. ALLEN.—I asked him of an instance where 15,000 pounds were ever issued to any other ship.

Mr. SHIPLEY.—Get that exhibit for him.

Mr. ALLEN.—What exhibit do you want?

A. “California” requisition.

Mr. SHIPLEY.—That is exhibit “A-21.”

Mr. ALLEN.—Couldn’t he first answer the question.

The COURT.—He says he can’t do it until he sees the other.

A. No, sir, from memory I can’t say of any instance where I know. But, for your information, I would like to read from this requisition of the “California.”

Mr. ALLEN.—I am not asking you about that requisition of the “California,” I am asking you for a definite fact in which 15,000 pounds of zinc were issued to a ship. [1169—1116]

A. I can only testify to those things from record, not from memory.

(Testimony of Edwin F. Meyer.)

Q. If you don't remember, say so.

A. Well, I don't remember, but this explains that zinc proposition which I think the jury ought to know.

A. "The allowance of 2,000 pounds of zinc is not enough." This is by the Chief Engineer of the ship, to the authorities at Washington. "Each boiler uses 35 plates at each full renewal, which makes 560 plates, or 5,600 pounds for the ship. If the ship is kept actively at sea, there should be practically one renewal every quarter for each boiler under steam. I respectfully ask that the Commandant be asked to authorize the immediate issue of these supplies." That would be 5,600 pounds for a ship like the "California," per quarter.

Mr. SHIPLEY.—Now, as to the "Kearsarge"?

Mr. ALLEN.—Were you buying zinc for several years in the future?

A. No, sir, for about six months, and we estimated that each of these cruisers, each of these battleships, would have a six months' supply.

Q. If you were estimating for six months in the future, why was it necessary to have fifteen or five days' delivery?

A. Oh, well, the ships were going to take this supply to leave the navy yard with; they weren't going to be there for six months, they were going to cruise for six months.

Q. You knew the Pacific Fleet would be in and out of there during the year? A. Yes.

(Testimony of Edwin F. Meyer.)

Q. And they could take it up most any time.
[1170—1117]

EDWIN F. MEYER on the stand.

Cross-examination (Resumed).

(By Mr. ALLEN.)

Q. Mr. Meyer, we were talking before lunch in regard to this allowance of the "Kearsarge." Do you know what the allowance of the "Kearsarge" was, at or about this time, with reference to this particular item of boiler plates? A. No, sir.

Q. You do know, as a matter of fact, that whatever her allowance may have been, she couldn't exceed that particular allowance, isn't that true, whatever her requisition might be, she couldn't exceed the allowance allowed to her, under the rules and regulations allowed by the navy; isn't that true?

A. Oh, yes, sir, they do in a number of instances, they exceed, of that character of supplies.

Q. As a matter of fact, those regulations are laid down by the Navy Department, and the communication which you just read to the jury, was a representation made to the Navy Department, in which they asked for an allowance, in which another ship asked for an allowance in excess of the allowance fixed by the Navy Department?

A. Yes, sir, in all cases where it is in excess of allowance, it must be acted upon by Washington.

Q. The "Kearsarge," then, didn't have any application there for an excess of allowance, did they, in this particular requisition?

(Testimony of Edwin F. Meyer.)

A. Why, the requisition was approved by Washington.

Q. I am asking you whether or not the requisition has any record or history which would show that it was in excess or that they were asking in excess of allowance. [1171—1118]

A. This is not in excess of allowance.

Q. Not in excess of allowance?

A. Not in excess of allowance.

Q. If it were 15,000 pounds it would quite likely be in excess of allowance, wouldn't it?

A. I can't say it was quite likely, no, sir, I can't answer that. I don't know about her allowance.

Q. Don't you know that ships of that size and character, a battleship such as the "Kearsarge," that the allowance was probably 4,000 pounds, rather than fifteen thousand?

A. You are dealing with a probability there, sir; I don't know anything about that.

Q. You don't know anything about it?

A. I know it is a fact the ship asked for 1,500 plates. Her allowance may have been increased to fifteen hundred at some time. As to the probability, I don't know.

Q. You will state, then, you don't know what her allowance was, or what she could have been allowed in any event?

A. I asked for the allowance book of those ships; but Mr. House said they were not here, they were away.

Q. As a matter of fact, the big cruisers of the navy,

(Testimony of Edwin F. Meyer.)

took more zinc, because they have more boilers than the battleships; isn't that true?

A. If they have more boilers, they take more zinc; yes, sir.

Q. Well, isn't it true, you have been with the navy a good while, the big cruisers of the navy do have more boilers and require more zinc?

A. I don't know as to the number of boilers in any of the vessels.

Q. You don't know as to that?

A. No, sir, except information that would come in the way of a requisition, that is, on the "California." [1172—1119]

Q. But this \$15,000 item was not a matter in your memory upon which you acted, in preparing this requisition on April 1st, 1908, was it? A. No, sir.

Q. Didn't act upon that in any event?

A. Well, you say in any event.

Q. Well, did you consider that? Look at that.

A. Well, I didn't consider that in making the requisition. I didn't consider any requisition except those which had gone before, in anticipating the requirements.

Q. You did consider those which had gone before, did you? A. Yes, sir.

Q. You considered, then, this requisition which was made in December, and which had been purchased by the United States Government authorities at \$7.13 a hundred?

A. I am speaking now of the requisitions from the ship, the "Kentucky."

(Testimony of Edwin F. Meyer.)

Q. You didn't consider the requisitions which came from your own office, in which the Government had purchased zinc at \$7.13 a hundred?

A. That requisition was initiated in my office. I am—

Q. You still haven't answered the question.

A. You are jumping about, Mr. Allen. We were talking a moment ago, about the ships' requisitions, and then you injected a yard requisition into it. Well, it is confusing.

Q. Well, Mr. Meyer, I am not confined to the same routine in asking the questions your counsel were. I can jump about. I am asking you about 438.

A. I would like to have you make it clear to me, so I can answer it intelligently.

Q. I ask you now, when you prepared requisition 438, April 1st, [1173—1120] 1908, whether you did consider the former purchase by the United States Government authorities of an exactly similar amount, of 50,000 pounds, which had been purchased by them, and delivered to you within two weeks, and prior thereto, at \$7.13 a hundred, did you consider that?

A. I probably did at the time; yes, sir.

Q. You won't say you did or did not; is that right?

A. Well, the information is in the office. I probably did.

Q. You probably did? A. Yes, sir.

Q. You considered the Government had bought one car of zinc at \$7.13 a hundred, and it was all right for you to secure it at twelve and a half, which was

(Testimony of Edwin F. Meyer.)

an increase of fifty per cent?

A. I thought it was perfectly proper, at the time. It took the Government from three to four months to get that first car. The second car was wanted for the ship due there about May 15th.

Q. Refreshing your recollection, it took the Government from February 4th to March 9th. February 4th was the date of the award. It took them to March 9th, the date the zinc was delivered in Bremerton, to get that zinc.

A. That isn't the proper way to compute that.

Q. I am asking you if that is not a fact.

A. No, sir, the fact is the requisition left the Storekeeper's Office on the first of December, and it took them from the 3d of December to the date you mention there in February, to get bids on that zinc.

Q. I am asking you whether it isn't a fact the United States Government purchased from a concern in Baltimore, and which was actually delivered from a place in Illinois, a car of zinc, which was awarded on February 4, 1908, and the zinc actually delivered in Bremerton on March 9th of the same year?

A. If the records show it, I think that is correct.
[1174—1121]

Q. Well, you have looked at the record several times. Isn't that a fact?

A. Yes, sir, I think the record shows that. That also is misleading, Mr. Allen.

Q. Well, that is a matter for your counsel.

A. No, sir, I think I am entitled to say something about that.

(Testimony of Edwin F. Meyer.)

Q. Well, you have said something. You want to say anything else?

A. Yes. The requisition I want to say, was prepared in the Storekeeper's Office on the 3d of December, and it took from the 3d of December, until in March, to get the delivery.

Q. And there wasn't anything to prevent the United States authorities from telegraphing to the firm in Baltimore, whether or not they could duplicate that order and send a second car at \$7.13, was there?

A. Absolutely nothing, sir. Washington exercises that right at all times.

Q. When requisition 438 left your hands, requisition 438 is the requisition for 5,000 pounds of zinc started April 1st, 1908, when it left your hands, or your desk, and went to Mr. Spear's desk, did it have attached to it any white flag or red flag, or any other mark which would call this particular transaction to his attention?

A. As I recall, it had written on the face of it in red ink, the statement which we have read here from time to time.

Q. As you recall it, it had written on it this statement, "Requested for the ships of the Atlantic Battleship Squadron," which you have identified as your handwriting.

A. Yes, sir, which would serve a better purpose than any slip I might have attached there.

Q. Mr. Meyer, that would have had the same thing written on it if it [1175—1122] had been a requi-

(Testimony of Edwin F. Meyer.)

sition for 625 as if it had been a requisition for \$6,250? A. Identically, sir.

Q. So you did not think it was necessary to call Mr. Spear's attention to the difference between a \$500 requisition and a \$6,000 one, by a special mark, or anything of that sort?

A. No, I hardly think so. The quantity was the thing we were concerned in.

Q. Yet you can't recall now, as you have stated, any other item similar in size for stock which was prepared by you during these months, can you?

A. Well, there were quite a number—oh, thousands of articles being requisitioned for. If I had an opportunity to go over the records there, I might find some.

Q. You have all the opportunity in the world.

A. No, sir, I haven't. Those records—I have been separated from them for five years; I haven't been over to the navy yard; I have only asked for such papers that occurred to me.

Q. If Mr. House, who is a thoroughly capable accountant, has made a search to ascertain whether there were any, and finds none in these two or three months, would you say his judgment was right in the matter?

A. Mr. House is biased; he may not have examined them as thoroughly as he might.

Q. You do not recall any now?

A. From memory, no, sir. I recall one requisition that was sent through about May. In looking over papers here the other day, I saw one which would

(Testimony of Edwin F. Meyer.)

aggregate probably something like \$10,000, but that particular requisition was prepared in another yard department.

Q. It was not for stock in your storehouse?
[1176—1123]

A. Well, it was for stock for the battleships.

Q. It was not stock for your warehouse, was it?

A. Well, all the stores are supposed to be warehouse stores, as far as that was concerned.

Q. What is this requisition you are talking about?

A. Some requisition there, a lot of material; I don't know what it was. I saw it was for something, one item on it several thousand dollars.

Q. But you don't know whether that was flour, or something of that sort?

A. No, sir, that was for metals of some kind.

Q. Well, what kind was it? Let us try to find out.

A. I don't recall now.

Q. You can't recall that? Here is the book that you asked for. A. I didn't ask for it, sir.

Q. State to the jury whether the "West Virginia" is approximately the same kind and character of boat as the "Kearsarge."

A. The "West Virginia" is a cruiser, a large cruiser, and the "Kearsarge" is a battleship. I think she is one of the large battleships, if I am not mistaken. I don't know as to her size; I imagine they are about the same, though.

Q. Calling your attention to page 133 of this publication from the Government printing office in 1904, I call your attention to the allowance of zinc for boil-

(Testimony of Edwin F. Meyer.)

ers, best, rolled plate, subject, under the head of allowance, two thousand (2,000) pounds. Allowance for the first half, 2,000 pounds allowance for the second half, 2,000 pounds. Would you consider, with that fact before you, it is possible the "Kearsarge" would want 15,000 pounds under one requisition?

A. Why, when the ships ask for one thousand plates, I imagine it would be possible. [1177—1124]

Q. Yes, sir, you imagine it is possible.

A. Yes, when an engineer officer says his ship would require 560 plates every three months, there is 1120 plates in six months.

Mr. ALLEN.—That is all right. That is all.

On redirect examination by Mr. SHIPLEY said witness testified as follows:

Q. What date do you refer to in this book, please, Mr. Meyer, calling your attention to this page 131 of the allowance book for the "West Virginia," I will ask you whether there is anything to be shown, or whether you have any knowledge as to whether that allowance was in force and effect between the first day of November, 1907, and the first day of October, 1908?

A. I have no information as to that at all.

Q. Does that book show it to have been in force during that period, on that page, anything in connection with that allowance that shows it?

A. No, sir. Just a second. It may be I can throw a little light on this matter by taking a minute here. It shows a number of amendments, but, without going into it in detail, I would say I have no knowledge,

(Testimony of Edwin F. Meyer.)

no, sir. These allowances are amended from time to time. I can't say that has not been.

Q. Mr. Meyer, if a ship is in need of such an article as zinc, regardless of whether the quantity she requires is in excess of the amount contained in one of these books, these printed books, is there a method by which she can procure that allowance to meet her needs, her actual requirements, whether it is in excess of this allowance or not?

A. Yes, sir, if she prepares requisitions for whatever she wants. It is just a little—

Q. By whom are those requisitions prepared?

A. By the engineer of the ship, the Chief Engineer.
[1178—1125]

Q. In the case of the "California," to which counsel directed you on cross-examination, by whom was the certificate or communication signed, calling attention to the fact that the requirements of that particular ship were 5,600 odd pounds quarterly?

A. By the engineer, and I think by the captain, the records show.

Q. Are those men who would have expert knowledge as to the requirements of that particular ship?

A. They are the only people who have that knowledge, I think, sir, on the ship.

Q. If a ship requisition comes into the Storekeeper's Office, demanding or calling for certain articles, and it does not appear on the face of the requisition to be in excess of allowance, is there any discretion in the Storekeeper to pass upon whether it is needed or necessary, or not? A. No, sir, I don't—

(Testimony of Edwin F. Meyer.)

Q. If a ship's requisition comes in signed by the proper officer of the ship, calling for a certain quantity of any article, and it appears upon the face of the requisition that it is in excess of the allowance, meaning the allowance that is given in her own appropriate allowance book, what is the procedure then?

A. The regulations provide that that paper be forwarded to the Navy Department at Washington, D. C., for approval. Then it is returned to the Storekeeper's Office, and, if approved, the articles called for are issued from stock or procured for the vessel. In any event, the vessel got the articles either from stock or by purchase for the vessel.

Q. Now, at the time that you were preparing these requisitions, anticipating requirement both of the Pacific Fleet and of the battleship fleet, commencing with the original purchase of 50,000 pounds and the second purchase of 50,000 pounds, under requisition 438, did you have personal knowledge as to the number of boilers with which each ship of the navy was equipped? [1179—1126]

A. Well, some of the requisitions that were received and that came under our supervision, that is, this statement—

Q. The question is, whether or not at that time you had in your mind, personal knowledge as to the number of boilers and the requirements per boiler, and requirement per ship, so that you had definite knowledge of those particular matters at that time.

A. Well, yes, sir; I knew that ships were requir-

(Testimony of Edwin F. Meyer.)

ing as much as 5,000 pounds a quarter.

Q. I guess my question is too long. The question is this, whether at that time the preparation of these requisitions, anticipating the necessity of stock, whether you were personally familiar as a matter of detail, with the number of separate boilers, or of boilers in each individual ship, or whether you approximated it.

A. Well, I would approximate it. I didn't know as to the number of boilers in each of the various ships, but my guide would be the demand, the previous demands of ships.

Q. Was the ship "California" one of the large cruisers which was referred to by Paymaster Spear as one of the "Big Four," do you recall?

A. I think she—I don't think she is one of the "Big Four"; I think she is approximately the same size of the "Big Four," perhaps just a trifle smaller. To the best of my recollection, the "Big Four" was the "Colorado," "Pennsylvania," "Maryland" and "West Virginia."

Q. Now, this allowance book pertains to the "West Virginia." The certificate of the Chief Engineer of the cruiser "California" was to the effect that the requirements of that ship were 5,600 pounds of zinc every three months. Which did you have in your mind when you prepared these requisitions, the ships' requisition of the "California," which is in your possession, or this book, which counsel exhibited to you? [1180—1127]

A. I would like to explain that, Mr. Shipley. The

(Testimony of Edwin F. Meyer.)

allowance of certain articles of the ship, like oil, and cotton waste and zinc, included, I have understood, as required, that is, that the ships are not restricted absolutely to their allowance, but that it makes some difference whether the ship is cruising or not. If she is in the harbor, she doesn't use as much of certain things as she would use if she were cruising. Now, the allowance in that case would be variable. You would have one six months, maybe, ten or fifteen thousand pounds, another six months probably only two or three thousand pounds; therefore, in estimating the probable demands of a ship going on a long cruise that way, you would estimate the largest amount required in any given period, and that amount would be used for a period of six months.

Q. Now, in anticipating to meet the requirements of the Atlantic Fleet and the cruisers which were to accompany the Atlantic Fleet on a cruise around the world, were you anticipating a need for a long continuous period of time, or to be tied up where she wouldn't need them naturally?

A. Well, I expected that the ships would take a full six months' supply, because she would not strike another American port for some considerable time after leaving this port, and I expected that all of the ships would take a full six months' supply to suffice until they got on the other coast.

Q. And, in fixing in your mind the necessities of ships for zinc, did you at that time have in your mind the requirements of the ship "California," as expressed officially by her expert officials on that par-

(Testimony of Edwin F. Meyer.)

ticular subject? A. Yes, sir.

Q. And in arriving at a conclusion as to the requirements of the total number of ships, how did you approximate it? [1181—1128]

A. Well, roughly, we multiplied by ten, that was the procedure generally, although there were only eight ships, but a little excess we ought to keep on hand all the time.

Q. After having made this approximation in anticipation of the requirements for zinc, that requisition was forwarded to the officials at Washington, was it not, for their approval? A. Yes, sir.

Q. And came back approved? A. Yes, sir.

Q. That is, the purchase?

A. Yes, sir, authorized by the Secretary of the Navy.

Q. Counsel asked you this question just a few moments ago, if there was anything to prevent the officials at Washington, when this second requisition came in, from telegraphing to the people or factory who had furnished the first carload of zinc, to ascertain at what price they could make the delivery on this second purchase on requisition 438. I will ask you this question: If, before the approval of this purchase of 50,000 pounds locally, under requisition 438, the Bureau of Supplies and Accounts, the Secretary of the Navy and other appropriate heads of the Navy Department in Washington, did not have in their possession and before them all of the matters that pertained to the purchase of the first carload of zinc, under the requisition, I believe, 490?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, that purchase was made by the Paymaster General at Washington, D. C.

Q. If the Paymaster General in Washington, D. C., had desired to have purchased this second carload that was called for under requisition 438 generally or directly from the factory, could he not have rejected this proposed purchase, under requisition 438, locally? [1182—1129]

A. Why, he was the man who authorized the purchase; yes.

Q. Well, I say, he could have rejected it, then?

A. Yes, the purchase wasn't authorized until he approved that.

Q. The fact you had initiated it to be purchased locally did not prevent the superior officer in Washington from turning down that requisition and refusing to have the purchase made locally, did it?

A. Oh, indeed not, sir; that is his function.

Q. I say, at the time of approving it, if they had elected to have rejected it, and bought directly from the factory in the east, they had the privilege of doing it, did they not?

A. Oh, yes, sir, that was their exclusive prerogative.

Q. And instead of doing that, they directed purchase through the Purchasing Pay Office in Seattle, did they not? A. Yes, sir.

Q. Of 50,000 pounds, under an estimated price of 12½ cents or \$12.45? A. Yes, sir.

Q. Was that action binding on you?

A. No, sir, I had nothing to do with that.

(Testimony of Edwin F. Meyer.)

Q. Well, I say, was it binding, so far as you were concerned? A. Absolutely binding, yes, sir.

Q. You had no authority to refuse any action on the part of the authorities at Washington, had you?

A. Indeed not, sir.

Mr. SCHLESINGER.—May I have Mr. Meyer withdrawn for a moment, and put a bank official upon the stand?

The COURT.—Yes.

(Witness withdrawn temporarily.) [1183—1130]

[Testimony of R. M. Walker, for Defendants
(Recalled).]

R. M. WALKER, recalled as a witness on behalf of the defendants, further testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

Q. Mr. Walker, I believed you testified the other day that you were an official of the National Bank of Commerce in this city. A. Yes, sir.

Q. And you know Mr. Emar Goldberg?

A. Yes, sir.

Q. And he had an account at that bank, did he not?

A. Yes, sir, he did.

Q. I will ask you, Mr. Walker, whether I asked you this morning to bring with you a statement of Mr. Goldberg's account for two certain dates.

A. Yes, sir, you did.

Q. And have you brought with you those statements taken from the bank books? A. Yes, sir.

Q. I will show you what purports to be a statement of Mr. Emar Goldberg, an account with the National

(Testimony of R. M. Walker.)

Bank of Commerce, from May 25th, 1908, to June 3d, 1908. I will ask you whether or not that statement is taken from your books.

A. Yes, sir, it was.

Q. And were those entries made in the usual course of your banking business? A. Yes, sir.

Mr. SCHLESINGER.—We will offer this in evidence, Mr. Allen.

Mr. ALLEN.—May I ask him a question?

Mr. SCHLESINGER.—Yes.

Mr. ALLEN.—Is this the original account or is this simply a [1184—1131] prepared memorandum?

A. That is just a copy of the entries on the ledger.

Mr. ALLEN.—Have you compared it, Mr. Walker, personally?

A. Yes, sir, I took it off myself.

Mr. ALLEN.—So you know it is a bank copy?

A. Yes, sir.

Mr. ALLEN.—I have no objection. That is Mr. Goldberg's personal account?

A. Yes, sir.

(Paper referred to received in evidence and marked Defendants' Exhibit "A-105.")

Mr. SCHLESINGER.—I will also show you what purports to be another statement of Mr. Emar Goldberg from April 27th, 1908, to April 28th, 1908 (handing same to witness).

A. Yes, sir, that is a copy.

Q. And that likewise is an accurate copy taken from your bank books, Mr. Walker? A. Yes, sir.

(Testimony of R. M. Walker.)

Mr. ALLEN.—What is that, Mr. Schlesinger, please?

Mr. SCHLESINGER.—That is simply one day showing the total amount of deposits.

Mr. ALLEN.—I don't understand this now. This is Emar Goldberg's account of what date?

Mr. SCHLESINGER.—That is between four or five different dates from May 25th to June 3d, 1908.

Mr. ALLEN.—I understand Mr. Walker this includes the items as they appear there from day to day during the periods at the top and the bottom; is that right?

A. Yes, sir.

Mr. ALLEN.—None omitted, or anything of that sort, they are all [1185—1132] on there?

A. Oh, yes; they are all on there.

Mr. SCHLESINGER.—I will also show you what purports to be a deposit slip bearing date 5/27/08, and ask you whether that is an original deposit slip with that bank by Mr. Emar Goldberg.

A. Yes, sir, it is.

Mr. ALLEN.—What relation is there to that and this (showing)?

Mr. SCHLESINGER.—To June 3d, 1908. That one (showing) is for one date.

Mr. ALLEN.—I object, your Honor, in that form. I submit this man should bring his ledger here and pick out the items.

Mr. SCHLESINGER.—Do you want his ledger from the very date of his birth down to the present time?

(Testimony of R. M. Walker.)

The COURT.—If this contains the items in the bonus account that went to Goldberg's personal credit that is all we are concerned about here, I think.

Mr. SCHLESINGER.—Yes, sir.

Mr. ALLEN.—Does it contain all of the items? Now, that is the question.

The COURT.—It contains all of the items going to defendant Goldberg, not items that go elsewhere?

Mr. SCHLESINGER.—That is the point exactly.

Q. I will now show you—is that the deposit slip (handing paper to witness)? A. Yes, sir.

Mr. SCHLESINGER.—We will offer this in evidence likewise.

The CLERK.—“A-107” is this deposit slip of 5/27/08?

(Paper referred to received in evidence and marked Defendants' Exhibit “A-107.”) [1186—1133]

Mr. SCHLESINGER.—I will now show you a deposit slip marked 5/18/08, and ask you whether that is a true copy of the original.

A. Yes, sir, it is.

Q. You had the original the other day, Mr. Allen. You might let this go in place of that original. We will offer this in evidence.

(Paper referred to received in evidence and marked Defendants' Exhibit “A-108.”)

Mr. ALLEN.—That is a true copy?

Mr. SCHLESINGER.—Yes, sir.

Q. And I will show you a final deposit slip marked

(Testimony of R. M. Walker.)

5/18/08 with Emar Goldberg, and showing deposits in the sum of \$586. Is that an original deposit slip?

A. Yes, sir.

Q. Stating the deposits of Mr. Goldberg on that date? A. Yes, sir.

Mr. SCHLESINGER.—We will ask to have this marked also, if your Honor please.

(Paper referred to received in evidence and marked Defendants' Exhibit "A-109.")

Mr. ALLEN.—Is that the original or a copy?

Mr. SCHLESINGER.—Yes, that is the original. Now, will you consent, Mr. Allen, these originals may be withdrawn and copies substituted therefor?

Mr. ALLEN.—Yes, sir. I am going to ask Mr. Walker to bring down here a statement of this account from the first day down to and including all of these days down to the last item mentioned here.

A. Yes, sir. [1187—1134]

Mr. SCHLESINGER.—I will give that back to you, Mr. Walker, because I have the certified copy. It is number "A-108."

Mr. RIDDELL.—That is the copy you are leaving in?

The COURT.—"A-109" withdrawn?

Mr. SCHLESINGER.—Yes. I have the certified copy instead of the original.

Mr. ALLEN.—You will bring the other statement, will you, Mr. Walker?

A. Yes, sir.

Mr. ALLEN.—That word "us" means check drawn on your own bank, doesn't it?

(Testimony of R. M. Walker.)

A. I think it does, Mr. Allen. Mr. Goldberg put those notations on there, but I would take it to be that.

Mr. ALLEN.—You didn't see him do that?

A. No, I didn't.

The WITNESS.—Isn't there one original ticket I didn't get back?

Mr. SCHLESINGER.—If there is we will try to find it for you.

The WITNESS.—You had it just a minute ago.

Mr. SCHLESINGER.—Mr. Silverstone, take the stand out of order.

**[Testimony of E. Silverstone, for Defendants
(Recalled).]**

E. SILVERSTONE, recalled as a witness on behalf of the defendants, further testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

Q. Mr. Silverstone, you testified the other day, when called as a witness for the Government, that in the year 1908 you were the proprietor of the Herald Hotel in the city of Seattle?

A. I testified I was interested.

Q. Interested? [1188—1135] A. Yes, sir.

Q. You are still conducting that hotel, Mr. Silverstone? A. I am still interested in it.

Q. Do you know Mr. A. Alper, Mr. Silverstone?

A. I do.

Q. And how long, please, have you known him?

A. About fifteen or sixteen years.

Q. Did you know him in the city of San Fran-

(Testimony of E. Silverstone.)

cisco? A. I did.

Q. What was your business in San Francisco?

A. I was contracting freight agent for the Southern Pacific Company.

Q. Contracting freight agent for the Southern Pacific Company. Did you, in your capacity, come in frequent contact with Mr. Alper? A. I did.

Q. In the way of soliciting freight from him?

A. Soliciting freight, yes, sir.

Q. I will ask you, Mr. Silverstone, whether, in the month of April, 1908, you saw Mr. Alper in the city of Seattle? A. I did.

Q. Are you able to give to this jury approximately the date when you saw him?

A. From my cash-book there I can say that he paid his bill in the hotel on April 4th.

Q. Of what year?

A. I believe that is the date, 1908.

Q. Does that cash-book show the amount of the payment on that bill? A. It does.

Q. And how long would you say that he had been at that hotel prior to April 4th, 1908? [1189—1136]

A. About four days.

Q. About four days. Will you please, Mr. Silverstone, by reference to this book, indicate to these men the dates upon which Mr. Alper stayed at your hotel?

A. Well, I should say either from March 31st or April 1st to April 4th. Mr. Alper and Mr. Bloom and Mr. Rightler, all connected with the Great Western Smelting & Refining Company, were there, Mr.

(Testimony of E. Silverstone.)

Alper and Mr. Bloom with their wives, and Mr. Rightler alone.

Q. Will you kindly read that entry?

A. April 4th received from Mr. Alper \$34.50.
For—

Q. Just the one entry is sufficient. Now, was that a payment for previous board and lodging immediately due by Mr. Alper?

A. From the time he arrived until the time he left, yes, sir.

Q. And do you, from that item, approximate that Mr. Alper arrived at your hotel on or about the 28th day of March, 1908?

A. Well, I wouldn't say that, but around the latter part, about—I should judge from this about the 31st.

Q. And that was in settlement of his bill, was it?

A. It was, yes, sir.

Mr. SCHLESINGER.—You may cross-examine. We will offer, your Honor, please, this item in evidence.

The COURT.—I believe it is already read to the jury.

On cross-examination by Mr. ALLEN said witness testified as follows:

Q. There really is a Mr. Alper living in San Francisco?

Mr. ALLEN.—Mr. Silverstone, he left this city, according to that—did he tell you good-bye, say he was expecting to leave the city—

A. Well, I didn't see him when he left. I met him while he was there.

(Testimony of E. Silverstone.)

Q. You didn't see him in the city after that?
[1190—1137] A. No, sir.

Q. He left here about the 4th of April?

A. Yes, sir.

Q. He was here about four days, then?

A. About four days, I would judge, from that.

Mr. SCHLESINGER.—May he withdraw that book?

Mr. ALLEN.—Yes. You would prefer to keep that book?

A. Yes. [1191—1138]

[Testimony of Edwin F. Meyer (Recalled—Re-direct Examination).]

EDWIN F. MEYER, recalled for continued re-direct examination, testified:

(By Mr. SHIPLEY.)

Q. Mr. Meyer, on Saturday, the United States Attorney asked you whether or not Meyer had always been your name, and whether or not you had at one time gone under the name of Fassimeyer. I will ask you to state to the jury what your full name is.

A. Edwin F. Meyer.

Q. What does that "F." stand for?

A. Well, that requires a little explanation. My father was known to his friends as Facemuier. He was familiarly called Facemuier.

Q. Meyer was the surname and "Face" was the given name?

A. No, William Facemuier, but people made it a sort of hyphenated name, and they always referred to me, the people who knew him, as Facemuier's boy,

(Testimony of Edwin F. Meyer.)

or something of that kind, but I have never been known by any other name than Meyer.

Q. Meyer was your father's surname and your surname? A. Yes, sir.

Q. Family name. And you have borne that name since your infancy? A. Since infancy.

Q. And your middle name stands for your father's name? A. "F.," yes, sir.

Q. Did you ever sail under the name of Fassimeyer? A. Absolutely no, sir.

Q. Intimated by counsel? A. Always Meyer.

Q. Mr. Meyer, you were asked under cross-examination with reference to whether or not it was not the invariable custom for the different departments of the yard requiring material, before they prepared a department requisition, to call on you for [1192—1139] information relative to the price at which the stock desired could be secured at in the market. I will ask you whether or not there are any exhibits which have been introduced in this case, any letters or documents such as you referred to in answer to counsel's question, showing that the requisition office of the particular department communicated directly with merchants and dealers, instead of applying to you for information?

A. They very frequently applied to contractors. And Mr. Goldberg has introduced here communications showing that the officers in the respective yard departments did, in fact, communicate with him asking—

Q. I will call your attention to a letter which has

(Testimony of Edwin F. Meyer.)

been introduced as one of the exhibits by Mr. Goldberg, I haven't the number of it, written by the naval constructor, or one of the naval constructors, I believe Mr. Walsh. What was his position?

A. Mr. Walsh was assistant naval constructor, and it was my understanding he was in charge of the material end of the Construction and Repair Department of the Puget Sound Navy Yard; in other words, the requisition office as well.

Q. And the letter shown in evidence in this case, directed to Mr. Goldberg, inquiring at what price certain supplies could be obtained from the Western Smelting & Refining Company, was that in aid of the preparation of a requisition in that particular department?

A. For that particular department, yes, sir.

Q. And not through you? A. No, sir.

Q. I will ask you the same question with reference to another letter introduced, which I believe, came from the requisition officer or clerk of the Engineering Department, directed to the [1193—1140] Western Smelting & Refining Company of this city. Was that the same character of a transaction?

A. The same is true of the Engineering Department, yes, sir, of which the letter, I think, was written by Mr. Drake, who, I think, at that time was connected with that department.

Q. Now, is it not true that there was some department of manufacturing, or something of that kind, over there that had an extensive requisition department?

(Testimony of Edwin F. Meyer.)

A. Well, prior to the consolidation of those respective yard departments there were five, and the Construction and Repair Department had a very extensive requisition office. Their requisition office was more complete, in fact, as far as details were concerned, than the office in the General Storekeeping Department.

Q. Now, that continued up until what year?

A. Well, various departments were consolidated, I believe, sometime in 1909 or 1910.

Q. In order to refresh your memory, did that not occur after the visit of Secretary Meyer to the Puget Sound Navy Yard, after the administration of Paymaster Brown?

A. The departments were consolidated before that time, but these requisition offices were not abolished until after Secretary Meyer had come here and decided the Storekeeper's Office was the proper office in which these requisitions should be prepared, and he abolished all of these other offices, particularly that in the manufacturing department, which, I think, was the only one—the others had been previously consolidated with the manufacturing office, but he abolished that and transferred two of the clerks to the Storekeeper's Office.

Q. And that was the time you were made Requisition Clerk? [1194—1141]

A. No, I was made Requisition Clerk before.

Q. Well, I mean your duties were almost entirely confined from that time on?

A. They had been prior to that time also, Mr.

(Testimony of Edwin F. Meyer.)

Shipley, but it was increased that time. I had then the responsibility of the requisitions which had previously emanated in the other offices.

Q. That was long after the period of the spring of 1908?

A. It was, indeed; December 1st, 1910, was that transaction.

Mr. SHIPLEY.—I believe that is all I care to re-direct on.

(By Mr. KERR.)

Q. I would like to ask the witness one or two questions.

The COURT.—Proceed.

Q. For the purpose of testing your knowledge about the possibility of the coming to this coast, counsel called your attention to the issue of "The Seattle Times" of July 2d, 1907. You recognize this? A. Yes, sir.

Q. You were called down and asked to examine it. You were asked whether you might not have read the contents of this particular issue. You didn't remember whether you had or not?

A. No, sir, I couldn't remember whether I did that or not.

Q. Well, do you remember that about July, 1907, it was an open question here, for several reasons, whether the Seattle "Daily Times" was going to declare war on Japan or not, was there not?

A. I remember there was some talk about it.

Q. Let me call your attention to these matters that counsel brought in here for some purpose, and

(Testimony of Edwin F. Meyer.)

this is what these headlines are: (Reading from headlines of newspaper.) And then I want to ask you whether this would in any way tend to call your attention [1195—1142] to the fact that the Atlantic Squadron might arrive here at some old time for the purpose of cruising around the world. That was July 2d. (Again reading from newspaper.) That was on July 2d, 1907. Had you read this article to which counsel called your attention, as a clerk in the store over at Bremerton, would it give you any notice, on a mere reading of that kind of a newspaper statement, to begin to assemble stuff for this fleet?

A. Absolutely have no effect whatever, sir.

Q. I want to call your attention to Defendants' Exhibit "A-80" and ask you— this has reference to requisition for sheet tin. I want to ask you whether that article used in the navy yard was as commonly and generally used as zinc plate? A. Sheet tin?

Q. Yes?

A. Yes, sir, it was; not in as large quantity.

Q. But was used there?

A. But used in smaller quantities, but as generally, I think.

Q. This requisition seems to bear date July 10, 1908, that I call your attention to, Defendants' Exhibit "80"? A. Yes, sir, July 10, 1908.

Q. Look at that folder and state to the jury what requisition that is.

A. Requisition 84, Naval Supply Fund, July 10, 1908.

(Testimony of Edwin F. Meyer.)

Q. That has been identified as Defendants' Exhibit "80." You find three bids there, don't you, for that tin? A. Yes, sir.

Q. Just read those three bids.

The COURT.—Oh, I think I will let it go in.

Mr. ALLEN.—Wouldn't your Honor at least limit this in that direction? [1196—1143]

The COURT.—How much further is this going?

Mr. KERR.—One or two others. And one other the plaintiff put in themselves, Plaintiff's Exhibit "75." I want to read this to the jury.

The COURT.—The one you were talking about was "80"?

Mr. KERR.—Yes, the one is A-80 that I was just talking about.

The COURT.—That is July 10, 1908.

Mr. KERR.—I now want to call the jurors' attention to Government's Exhibit No. 75. This requisition "75" called for two items, one of lifts, bulkhead lifts, and the other of zinc plate. I want to call the jury's attention to the bids upon the item for flathead lifts.

The COURT.—You can read it. It is in evidence.

Mr. KERR.—This is in evidence.

The COURT.—Yes. I don't know whether it has been read or not. You can read it.

Mr. ALLEN.—I don't know what you are talking about, Mr. Kerr.

Mr. KERR.—You put it in, you ought to know. The bid of the Knox Brothers, 96 Illinois Street, New York, item No. 1, Class No. 1, lifts, \$36.14.

Mr. ALLEN.—That is one item?

Mr. KERR.—Yes, per pound, 13.9 per pound. The only other bid is a bid of Richard A. Gray, same item, thirty cents per pound.

Mr. ALLEN.—He is down in California?

Mr. KERR.—I don't know where he is, but that is the two bids you had on that.

Mr. ALLEN.—Look and see.

Mr. KERR.—I desire in this matter to offer in evidence Defendants' Exhibit "A-58," requisition under date of August 5, 1907.

Mr. ALLEN.—That is for the same purpose, Mr. Kerr? [1197—1144]

Mr. KERR.—Yes, the same purpose. Shows this was awarded to W. A. Corder upon a bid of \$240.00.

The COURT.—Read that part you desire in.

Mr. KERR.—The bid of Port Lumber Company, Inc., for this, \$41.00.

Mr. KERR.—That is all.

(Folder referred to received in evidence and marked Defendants' Exhibit "A-58.")

Mr. ALLEN.—That is all.

Mr. KERR.—We had expected to call John Davis, of John Davis & Company, who testified in the former trial, but he is in New York. Now, we had expected Mr. Alper to be here to-day. I hold in my hand a telegram from him, which I will show to your Honor. He will probably be here in the Shasta Limited to-night. I didn't suppose the case would close so soon.

Mr. SCHLESINGER.—Your Honor, we may, if we

have any rebuttal, want to call a character witness, Mr. Echsteine, if he should be here in the course of the afternoon. If he shouldn't come, then we will rest for Mr. Goldberg.

The COURT.—Well, call the next witness.

Mr. SCHLESINGER.—I would like to have this understanding with counsel, if the rebuttal carries the case over till morning I want the opportunity to put Mr. Alper on on his arrival.

The COURT.—If he arrives. Here is your telegram.

Mr. ALLEN.—If there is any likelihood of Mr. Alper getting here I am perfectly willing to let their case remain open. We want to see Mr. Alper as badly as they do.

Mr. SCHLESINGER.—We used every possible effort to get him here, as this telegram will show.

The COURT.—Call the next witness.

Mr. VANDERVEER.—Defendant Corder rests.

[1198—1145]

The COURT.—Meyer rest?

Mr. KERR.—We rest.

The COURT.—Did you rest, Mr. Shipley?

Mr. SHIPLEY.—We rest, your Honor.

The COURT.—And Goldberg rests?

Mr. SCHLESINGER.—Yes, your Honor.

WHEREUPON ALL OF DEFENDANTS REST
THEIR CASE IN CHIEF. [1199—1146]

[Testimony of G. E. Lockwood, for Plaintiff
(Recalled in Rebuttal).]

G. E. LOCKWOOD, recalled in rebuttal as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. You have been sworn, I believe?

A. Yes, sir.

Q. Mr. Lockwood, calling your attention to Plaintiff's Exhibit "8," and more particularly to the condition of your metal warehouse—you are now and have been since along prior to 1908 the custodian or the man in charge of the metals warehouse; isn't that true?

A. Well, I have been in charge there practically since about November, 1907.

Q. Since November, 1907? A. Yes, sir.

Q. You were in charge, then, Mr. Lockwood, during all the time that those entries were made on this exhibit "8"? A. Yes, sir.

Q. For this particular kind of zinc?

A. Yes, sir.

Q. Mr. Lockwood, do you recall, during the year 1907 or 1908, did you ever at any time issue to the battleship "Kearsarge," or any other ship, 15,000 pounds of zinc of that particular size?

Mr. SHIPLEY.—We object to the question as not rebuttal, for the reason that the issue tendered by the defendant did not go to the actual amount issued from the Storekeeper, but to the fact that the lan-

(Testimony of G. E. Lockwood.)

guage on the requisitions called for a certain amount; that this evidence is not responsive to any issue tendered by the defendant. We don't question the amount this [1200—1147] man actually issued.

Mr. ALLEN.—That requisition, your Honor, is the one that Mr. Meyer, that I went over with Mr. Meyer for a long period of time.

The COURT.—Is it the requisition that says that or is it—

Mr. ALLEN.—The requisition says "1500 S," or something of that sort, and he said it meant 1500 *hundred* plates, which would be about 15,000 pounds.

Mr. SHIPLEY.—The requisition calls for 1500 zines, and Mr. Meyer's contention is that calls for plates.

Mr. SHIPLEY.—We are not disputing the accuracy of this record as to the amount that was actually delivered.

Mr. ALLEN.—I will show your Honor the item (exhibiting paper to the Court). The witness stated he didn't conceal that item and didn't mislead him, but they have attempted to show there is some discrepancy or disparity here.

Mr. SHIPLEY.—Between the amount called for and the amount that was actually taken out of stock, yes.

The COURT.—I think he can answer the question, if you know.

Mr. ALLEN.—Read him the question.

Mr. SHIPLEY.—My objection to it is, it is rais-

(Testimony of G. E. Lockwood.)

ing a false issue, one not tendered by the defense. We are not questioning the amount delivered, but he was justified because of the call—

Mr. SHIPLEY.—Exception.

Mr. ALLEN.—Read him the question.

Q. (Question repeated.) A. No, sir.

Q. Never did? A. No, sir.

Mr. SHIPLEY.—We move to strike the answer and question as not an issue in this case, and tending to throw no light upon any issue [1201—1148] in this case before this jury.

The COURT.—That part of the answer that goes to any other ship will be stricken, but that part that goes to this particular one under this particular requisition may stand, and an exception is noted.

Mr. ALLEN.—Did you attempt to check these different items over with some care occasionally to see whether or not your cards did, as a matter of fact, correspond and tally with the card, whether the amount on hand tallied with the card?

A. Well, quite frequently we inventoried the stock to see the amount of stock on hand checks with the quantity called for on the card.

Q. On the card? A. Yes, sir.

Q. You never found any discrepancy of 15,000 pounds? A. No, sir.

Mr. ALLEN.—That is all.

On cross-examination by Mr. SHIPLEY said witness testified as follows:

Q. Mr. Lockwood, if a call came in to you to furnish a certain number of articles, such as gaskets,

(Testimony of G. E. Lockwood.)

say, 1500, would you issue that by weight or by numerical number as called for?

A. Well, I couldn't very well answer that question, because I have never handled that particular class of goods.

Q. Well, I say, if it came in calling for articles of a specified number, 1500 articles of a certain kind, how would you issue it, I say, by the number called for or by weight?

A. Well, it would depend on the way we had them on charge. If we had them on charge, we sold them by the pound, we would simply count out 1500 gaskets, weigh them and charge the ship [1202—1149] with whatever the weight might be.

Q. But you would actually issue the 1500 called for, would you not, if the call was for 1500 numerically of a certain article?

A. Unless—now, that is a thing that quite often happens. A ship's requisition comes in, and we see that it calls for something that is out of the ordinary. For instance, they start in with a number of items that run by the foot; they come down to where they call for an item, we know that the item should be by pounds, and they forget to change it to pounds and let it run on feet. Well, in that case, when it is a mistake, they have made a mistake in writing out the requisitions, we make inquiries and get it straightened out before we fill that particular item.

Q. But I say, if the call is for a certain article requiring a certain number of a certain thing, then that is the specification that controls, is it not?

(Testimony of G. E. Lockwood.)

A. Well, it is unless it would look something out of the ordinary, then we would make inquiry about it.

Q. Something that was an impossibility, for instance?

A. Well, if it was something that we knew absolutely was wrong—

Q. Now, for instance—

Mr. RIDDELL.—Let him answer the question.

A. What I mean to say, if they call, for instance, for 1500 gaskets, or whatever it might be, and we know it was clear out of reason, they didn't want that, we would make inquiries before we filled that particular item.

Mr. SHIPLEY.—Would there be anything in the call for 1500 gaskets that would be unreasonable, or show it wouldn't be delivered by counting out the number of gaskets called for?

A. We might know ourselves it was an unreasonable amount and that [1203—1150] the ship had no use for that many. In that case we would make inquiry before we went ahead with it.

Q. Did you, as warehouseman of the Puget Sound Navy Yard, have it in your discretion to question the rightfulness of the technical officer aboard a ship to call for a specific number of a certain article?

A. I had a right at all times to take it up with the Chief Clerk of the department, or the Record Order clerk, who has charge of the ship's requisitions, and make inquiry from him and get instructions from

(Testimony of G. E. Lockwood.)

him, if I wasn't satisfied with the way the requisition read.

Q. What is controlling about the article that shall be furnished, your particular ideas or a requisition under the authorization of the proper naval officer?

A. I don't claim that I have any authority at all. I simply would take it up through proper channels and get my instructions from people that was over me before I would make it.

Q. And what would be finally controlling?

A. Well, as I say, we might find this requisition was in error, this item had been wrote out wrong, then the people in authority would order me to change it a certain way.

Q. Well now, with that explanation, suppose a call came in on a ship's requisition calling for 200 zincs, boiler, 12 by 6 by $1\frac{1}{2}$, what would you issue on that call?

A. I would issue 200 zincs, because that would be a very small amount.

Q. You would issue 200 zincs, and you would weigh the zincs and charge on your card the weight of the zincs, wouldn't you? A. Yes, sir.

Q. And you would issue it because it called numerically for 200 [1204—1151] zincs, would you not?

A. Because it called for 200 zincs, because I would know that was not out of the ordinary, and it would be perfectly right to fill it.

Q. Did you have technical knowledge sufficient to put your opinion above the chief engineer aboard of

(Testimony of G. E. Lockwood.)

a battleship as to the amount of zinc that was proper to furnish a ship?

A. I never questioned his ability, but I would question the man that had made out the requisition, knowing that he might have made a mistake.

Q. If a call came in for 300 zincs, what would you issue?

A. I would weigh out 300 zincs and deliver them to the ship, issue them.

Q. Suppose there was a call came in for 500 zincs, what would you issue?

A. I would weigh 500 zincs and issue them.

Q. Suppose there came in a call for 1,000 zincs, approved by one of the superior officers of the navy, what would you issue?

A. Well, I would keep on issuing the number called for until, as I say, it looked like an unreasonable amount, something a great deal larger than I had ever issued to any ship before, then I would begin to ask questions of people over me.

Q. At what point would you stop issuing according to the call because it was unreasonable, or in excess of a reasonable specification?

A. Well, when I seen that the amount run up considerably more than I had ever issued to any other ship, why, I would naturally feel suspicious about it, think it was an error in writing out the requisition, and I would inquire through the Record Order clerk more than likely to find out if that was really right, if they [1205—1152] meant zincs or meant pounds, then he would have instructed me what to do.

(Testimony of G. E. Lockwood.)

Q. Now, as I understand your position,—I am not trying to put you in a false light before this jury—your position was simply this: If there was anything of that kind which suggested itself to your mind that there might be a clerical error, you would call that to the attention of the proper clerk in the Storekeeper's Office? A. Yes, sir.

Q. And have him advise you?

A. He would probably write the ship's officer, or telephone them, whatever way he would get in communication with them, and instruct me.

Q. Let me ask you this question, which I think will clear up the situation: Is it not a fact these ship's requisitions, in passing through the Storekeeper's office, over the desk of the proper clerk before they went to you to be filled, were checked and initialed with a letter "D" and a letter "S," the letter "D" meaning to be on delivery, the letter "S" to be filled from stock, that it was initialed that way opposite the item? Isn't that shown on all these requisitions?

A. I don't remember anything like that before a requisition come to me. There was a time that they done it a little bit different from that. The clerk in the office made out what we call "initialing transfer." He copied off the items off the requisition the different storemen were supposed to issue and sent them out to us and we would fill from this transfer. In that way we didn't see this ship's requisition at all.

Q. Now, calling your attention to the particular exhibit "A-21," the ship's requisition for the "Kearsarge," and to item 206, and so you can see just the

(Testimony of G. E. Lockwood.)

shape itself, item 206 reads, in the [1206—1153] opposite, the column number, the unit number, is “sheets,” isn’t it? A. Yes, sir.

Q. The word “sheets”? A. Yes, sir.

Q. Then immediately in the next line below, underneath the word “sheets,” is the word, or the abbreviation, “No.” A. Number.

Q. That means for the number? A. Yes, sir.

Q. The number of the articles that is to be called for opposite that? A. Yes, sir.

Q. Opposite that comes “1500,” doesn’t it?

A. Yes, sir.

Q. Now, you would read that, as it came to you, as specifying 1,500 separate zincs, reading that?

A. That is the way it reads as it is written there.

Q. Absolutely, isn’t it? A. Yes, sir.

Q. There can’t be any question about that, Mr. Lockwood?

A. But there never was delivered—

Q. No, I don’t question that, the stock card doesn’t show the delivery. The question is, what is the meaning of that requisition?

A. That requisition reads all right enough 1,500 zincs.

Q. As it passed through Mr. Meyer’s hands it was a demand upon the Storekeeper to furnish this ship with 1,500 zincs, wasn’t it?

A. That is the way the requisition reads there.

Q. There can’t be any doubt about that?

A. I am not questioning that. [1207—1154]

Q. I am not questioning your accuracy, Mr. Lock-

(Testimony of G. E. Lockwood.)

wood, nor the record you made, it is simply the question of what this requisition called for.

Mr. SHIPLEY.—That is all.

On redirect examination by Mr. ALLEN said witness testified as follows:

Q. Mr. Lockwood, if you ran your eye further out along the same line and saw that the estimated cost was at \$225.00, you would know that wasn't 15,000 pounds of zinc, wouldn't you? A. Yes, sir.

Q. You would know it was 1,500 pounds of zinc that was meant? A. Yes, sir.

Mr. ALLEN.—That is all.

On recross-examination by Mr. SHIPLEY said witness testified as follows:

Q. Were you concerned, in filling these requisitions, in the estimates that were put on there by the ship's officers, if you had the goods in stock?

A. Well, I was to an extent, yes. If it was an unreasonable amount, and I had reason to think they had made a mistake in writing out the requisition, which often occurs. It occurs now every week.

Q. That would be simply a matter of calling attention to a possible clerical error? A. Yes, sir.

Q. So far as what the articles cost, if you had them in stock it wasn't a matter that concerned you, what figure the ships' officers put on it, was it?

A. Well, a great many times I wouldn't look to that amount at all, [1208—1155] the estimated cost, but in case I did I would notice right away there was something wrong with their estimate.

(Testimony of G. E. Lockwood.)

Q. In other words, you would have figured there is something peculiar if a ship's officer, in his opinion, put a different estimated price from what you knew you were paying, or ought to pay here?

A. Well, if I knew it was clear out of reason. Of course, their estimates vary some, we know that.

Q. But the question I am getting at is, whether your department over there was controlled in any measure by the cost which was put on there as an estimate by the ship's officer?

A. Well, I don't know that there really were. I don't really know how they handled that part of it; I never gave that much thought.

Mr. SHIPLEY.—That is all.

(By Mr. VANDERVEER.)

Q. Mr. Lockwood, are you familiar with the equipment of those ships, the matter of engines and boilers and things?

A. Well, I couldn't say I am to any great extent.

Q. Some of them have twenty, twenty-four and twenty-five boilers, haven't they?

A. Well, I don't think any of them have twenty-four boilers.

Q. Twenty boilers. You don't think any of them have twenty-four boilers?

A. Well, I couldn't answer that accurately.

Q. Some of them have twenty boilers, isn't that a fact, that have been in that yard?

A. Not to my knowledge. I don't know. I didn't know any of them had over twelve boilers.

(Testimony of G. E. Lockwood.)

Q. And they require re-zincing every three months, don't they?

A. That I don't know. That is out of my line of business. [1209—1156]

Q. And they take thirty-five plates to each boiler?

A. That is clear out of my line of business.

Q. That is 14,000 pounds of zinc in six months for the twelve boilers?

A. I don't know a thing about it.

Q. How, then, can you pass upon these requisitions and say whether they are reasonable or unreasonable?

A. I didn't pass upon them, sir. You are mistaken.

Mr. VANDERVEER.—That is all.

Mr. KERR.—If counsel will consent, we would like to put Mr. Echsteine on the stand. [1210—1157]

[Testimony of Nathan Echsteine, for Defendants.]

NATHAN ECHSTEINE, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KERR.)

Q. State your full name to the jury, Mr. Echsteine.

A. Nathan Echsteine.

Q. You reside in Seattle? A. Yes, sir.

Q. What is your business, Mr. Echsteine?

A. I am vice-president of the Schwabacher Brothers, incorporated.

(Testimony of Nathan Echsteine.)

Q. And how long have you been connected with Schwabacher?

A. Between fifteen and sixteen years.

Q. Are you acquainted with Emar Goldberg?

A. Yes, sir.

Q. How long have you known him, Mr. Echsteine?

A. Probably six or seven years; maybe a little longer.

Q. Have you known him intimately?

A. In a general way.

Q. Do you know what his reputation in the city of Seattle is for truth, probity and uprightness of dealings. Just answer yes or no. A. Yes, sir.

Q. State what it is, good or bad.

A. As far as I have known, his reputation has always been good.

Mr. KERR.—That is all.

On cross-examination by Mr. ALLEN said witness testified as follows:

Q. Mr. Echsteine, your observation, I presume, is confined to your personal experience with Mr. Goldberg more than anything else; [1211—1158] isn't that true?

A. My observation, or my knowledge, rather, is based on the general opinion of the public with whom I come in contact.

Q. With whom did you ever talk in regard to Mr. Goldberg?

A. That would be an impossibility for me to say, because I have talked to a great many people with reference to the matter.

(Testimony of Nathan Echsteine.)

Q. Will you name one of them, Mr. Echsteine, with whom you discussed this matter of his probity and integrity and the like?

A. Mention Leo Schwabacher—it would be impossible for me to give the names of people, because I talked with a great many people in the course of a day, and talk about a great many people and a great many subjects.

Q. He is your same race, isn't he? A. Yes, sir.

Q. And probably take more interest in Mr. Goldberg for that reason than possibly if he was not; isn't that true?

A. I don't believe that would influence me in the least.

Q. You mean to say, your testimony is he has never mistreated your house or yourself in a business way; is that right? A. No.

Q. He has never mistreated your house or yourself in a business way?

A. I didn't understand that was the question. I thought the question was what my opinion of his general character around town was.

Q. Yes, but Mr. Echsteine, he has never mistreated your house or your business concern?

A. No, sir, not as far as I was concerned.

Q. And that would naturally affect your judgment one way or the other? A. Yes, sir.

Q. And you don't know anything about his relation toward the United States Government in the purchase of supplies? [1212—1159]

A. No, sir, none whatever.

(Testimony of Nathan Echsteine.)

Q. You never looked into that?

A. No, sir, none whatever; never did.

Q. You never heard of the settling up with the American Iron & Metal Company?

A. I know nothing about that case, except what I have seen in the newspapers.

Mr. ALLEN.—That is all.

On redirect examination by Mr. KERR said witness testified as follows:

Q. You are a member of the School Board in the city? A. Yes, sir.

Mr. KERR.—That is all. [1213—1160]

[Testimony of E. K. Reilly, for Plaintiff (Recalled in Rebuttal).]

E. K. REILLY, recalled in rebuttal as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. Mr. Reilly, what is your vocation, please?

A. Auditor Seattle National Bank.

Q. Seattle National Bank. And what is your position there? A. Auditor.

Q. Mr. Reilly, did you have, in the year 1908, a deposit in your bank by J. A. Kettlewell?

A. I did.

Mr. SCHLESINGER.—How do you spell your name, please?

A. R-e-i-l-l-y.

Mr. SCHLESINGER.—I want to show what his nationality is. [1214—1161]

[Testimony of Ray Spear, for Plaintiff (Recalled in Rebuttal).]

RAY SPEAR, recalled *to rebuttal*, as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. Mr. Spear, what was the custom in vogue at the Puget Sound Navy Yard during your incumbency there from January, 1908, down through the months of January, February, March, April, and later of the same year, with reference to the action of departments in attempting to obtain material for use in their departments?

A. Well, of course, the yard departments were not supposed to make requisitions, that is, an open purchase requisition, for any article that was in store. They would first send their shopman over to the storehouse in an attempt to draw this particular article, and he would usually ascertain the article was not there. He would report that fact back to his own office, that is, the manufacturing department of the yard, and it was then the usual custom for the head of the department, Steam Engineering Department, or the Construction & Repair department, to call up the office, that is, the General Storekeeper's office,—

Q. That was the office in which you and Mr. Meyer were located?

A. Yes, sir. And they usually inquired as to whether we expected to receive any of that material into store in the near future, and if not they would usually ask for the information necessary for them

(Testimony of Ray Spear.)

to make up a requisition in order to obtain some of that material.

Q. To whom would this inquiry be personally directed?

A. Well, I have given that information myself personally a great many times, and I assume in my absence that the Chief Clerk, Mr. Meyer, would have to answer the telephone. [1215—1162]

Q. He would perform that same duty if you didn't perform it, as a matter of fact, would he not?

A. Yes, sir.

Q. And it was the duty, then, of yourself, or the Chief Clerk, or to whoever the inquiry might be addressed, to furnish those different departments the possible estimated cost?

A. I have followed that procedure a great many times myself, and I presume it has been followed a great many times by others in the office.

Mr. ALLEN.—Mr. Spear, did you ever at any time give to Mr. Meyer, your Principal Clerk, authority to sign your name?

Mr. SHIPLEY.—We object to this. The matter was thoroughly gone into, the letters have been submitted to Mr. Spear here in the presence of this jury, and he has denied it, stated that he wasn't there and that he knew nothing about his name having been signed there.

A. I stated I might not have been there on that particular date, that I didn't recall.

Mr. SHIPLEY.—Well, that as I remember, is the statement made in the presence of the jury.

(Testimony of Ray Spear.)

The COURT.—He may answer the question. He was interrogated with relation to this one letter on that one day, but Mr. Meyer's testimony went further.

Mr. SHIPLEY.—Exception.

Mr. ALLEN.—Yes, sir. Read him the question.

Q. (Question repeated.) A. No, sir.

Q. You never did? A. No, sir.

Q. Did you ever know, until you came into this court and sat here [1216—1163] in the courtroom and this letter was presented to you, did you ever know that Mr. Meyer, had on any occasion, ever signed your name to any communication going out of that office? A. No, sir, I did not.

Mr. SHIPLEY.—Object as incompetent, irrelevant and immaterial, and not rebuttal evidence.

The COURT.—He may answer.

Mr. SHIPLEY.—Exception.

A. No, I do not recall any other circumstance of that nature. I would like to explain that.

Mr. ALLEN.—Go ahead.

A. (Continuing.) It was quite the practice of the office, on duplicate papers of the office that went out, to use a rubber stamp of my name to avoid signing six times on one paper.

Q. But that was not a stamp purporting to be anything like your signature?

A. No, sir, it was a stamp.

Q. Of your name printed out? A. Yes, sir.

Q. Mr. Spear, I will ask you with reference to the duty of requirements of your office in regard to

(Testimony of Ray Spear.)

checking up ships, checking up the requisitions from ships which would come to your office as regards their proper allowance. What were your duties in regard to that, and what did you do?

A. We have a division in our office called the Store Order Section, or sometimes known as the Ships' Requisition Section, that has on file in that particular department all the allowance books of the various ships that are placed on the yard. When a ship's requisition comes in, the first thing, after giving it a record number, about the first thing that is done with that is to check over the items to see they are not in excess of the quantities [1217—1164] that have been allowed by the respective bureaus back in Washington. Now, ships quite frequently, through error, or sometimes through inattention, will ask for a great deal more material than entitled to, and I suppose a great many more times more material is issued than they are entitled to, but we try to stop that sort of thing.

Q. As a matter of fact, that is one of the duties of your office, to stop that? A. Yes, sir.

Q. Can you tell, by reference to this book (handing book to witness), what the allowance was for a ship the size of the "West Virginia," or the "Kearsarge," more particularly the "Kearsarge," what would be the approximate allowance?

A. This was probably the allowance at one time. Whether this is the allowance now or not, I don't know.

Q. You are acquainted, in a general way, with

(Testimony of Ray Spear.)

allowances for zinc of this size? A. Yes, sir.

Q. What would be the approximate allowance annually, or semi-annually, whichever way you want to compute it?

Mr. SHIPLEY.—You asking him for semi-annually or yearly allowances?

Mr. ALLEN.—State either way.

Mr. SHIPLEY.—He ought to be confined to one or the other.

Mr. KERR.—That question is as to the witness' information outside of that record, it seems to me, your Honor. He can ask him whether he knows.

The COURT.—If he knows. He can refresh his recollection from that and then testify.

Mr. ALLEN.—He said he would testify from that.

Mr. KERR.—Well, that is the best evidence, if the Court please.

Mr. SHIPLEY.—I think that was on page 131.
[1218—1165]

The WITNESS.—What page?

Mr. SHIPLEY.—131.

A. This shows that a ship of the "West Virginia," or an armoured cruiser of the first class, is entitled to 2,000 pounds for six months' period; that is, be a total of 4,000 pounds for a year.

Mr. ALLEN.—What are the requirements of an armoured cruiser of the first class as compared with a battleship of the type of the "Kearsarge" in the manner of amounts of zinc plates for boilers?

A. Well, a cruiser and a battleship of the same total—the armored cruiser would require more en-

(Testimony of Ray Spear.)

gineering supplies than the other; they are higher power and have more boilers.

Q. And necessarily require more boilers of the type of the "Kearsarge"?

A. Yes, sir. You understand, the essential powers of a cruiser are her speed.

Q. She has more horse-power and more boilers generally? A. Yes, sir.

Q. But less fighting capacity, is that it?

Mr. ALLEN.—Mr. Spear, I wish you would describe to the jury the relation and commission of Mr. Meyer with reference to the inspecting calls both before and after the arrival of the zinc, or any other material. What would be his duties?

A. I didn't quite understand your question, Mr. Allen.

Q. (Question repeated.)

A. Well, of course, the Inspection Call Clerk is a subordinate directly under Mr. Meyer, and he would control his actions to a certain extent in routine matters, as to the preparation and the checking of the bills on the inspection call against the inspection call, and so forth, general supervision. [1219—1166]

Q. What was the arrangement—

A. (Continuing.) He could give him any instructions, of course, he saw fit to give this man, as naturally he would as Chief Clerk to any clerk in the office.

Q. What was the relation existing between Mr. Meyer and the subordinate officer who more or less generally checked up this material under the inspection call.

(Testimony of Ray Spear.)

A. Why, he naturally came in contact with him a great deal. Just what his relations were, I don't know, sir.

Q. I know, but I am asking you about this: Were these inspection boards more or less directed and controlled in their action as regards acceptance of material by the representations made to them from your office as to the necessity for the material?

A. A great many times, if we expressed a wish to have that material passed, it would be passed.

Q. It would be passed? A. Yes, sir.

Q. Mr. Meyer has made this request on this subordinate officer?

Mr. SHIPLEY.—Now, if you know, Mr. Spear.

A. I say I don't know, as a matter of fact. I could do it; I could have it done. I don't know what Mr. Meyer used to do along that particular line.

Q. In the event that material was at the yard, and your department thought it necessary that that material be accepted, and you were not personally present, who would be the authorized officer to act with reference to the matter?

Mr. KERR.—We object, your Honor, unless this witness can testify of his own knowledge it was done by this defendant on some occasion.

The COURT.—He can testify who would be the responsible party.

Mr. KERR.—He hasn't testified there was yet any person with authority to do that kind of thing.
[1220—1167]

The COURT.—Oh, he can answer. Read the ques-

(Testimony of Ray Spear.)

tion. (Question repeated.)

Mr. KERR.—The question is now, who had authority to do that. We object unless such authority was lodged in some person.

The COURT.—I am afraid we don't understand each other. I have ruled out the other rightfully, but who was responsible for the reception of those things?

Mr. KERR.—That, your Honor, we submit is a matter of conclusion purely. Responsible for what? For inducing superior officers to act in disregard of their duties? How could such a responsibility be rested on such a clerk?

The COURT.—We don't understand each other.

Mr. KERR.—That is precisely what counsel is aiming at.

Mr. ALLEN.—The question, I think, is very clear.

The COURT.—Just read it.

Mr. ALLEN.—In the event that material has been inspected, and the inspection officer was about to make their return, and, for reasons or lack of reasons, referred to your department, it was thought best that that material should be passed and accepted by the Board, and in the event you were not personally present what officer would be responsible for the action of your department?

Mr. KERR.—We object as an improper question, assuming something that could not by any propriety have existed, and absolutely in contravention of the regulations.

The WITNESS.—I think I can clear up the whole

(Testimony of Ray Spear.)

situation if you will let me explain to the jury.

The COURT.—Well, see what you have got to say.

A. It very often happens that material was delivered on the yard and, in some very minor detail, varied slightly from the specification. For instance, packing. The specifications at times [1221—1168] will vary as to packing, the stencil mark on the outside of the box, and technically many times, if we followed strictly the regulations, the material should be rejected. The inspecting officers, in a case like that, would come to me and ask what we better do about that. And it depended a great deal of the time—if we needed the material very badly I would recommend to the Board of Inspection they waive that detail, and accept the responsibility myself. I have recommended many times to the Board of Inspection that material be passed that did not come up to specifications, not so much the quality of the material as to the technical matter.

The COURT.—Now, let him answer who acted for him when he was not present.

Mr. VANDERVEER.—There seems to have been no testimony regarding any such action. They don't claim that the rejection of this 1300 pounds of zinc was any such action as the witness testified to.

The COURT.—Well, let him answer. Note an exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.) It would be one of your subordinate officers. Who was that?

A. It would be Mr. Meyer.

(Testimony of Ray Spear.)

Q. Before Mr. Barnes came there it would be Mr. Meyer? A. Yes, at this particular time.

Q. What was the ordinary and customary procedure, Mr. Spear, in the event of a requisition being sent to the Navy Pay Office in the City of Seattle, and the purchase was attempted to be made in more than ten per cent above the amount of the estimated cost made in your office?

A. Well, in the event that the Navy Pay Office here in Seattle [1222—1169] was unable to obtain bids within the estimate, or within ten per cent of the estimate, the usual practice was to send all bids, accompanied by a letter, over to the navy yard for recommendation of my office, or of the office that originated the requisition.

Q. In other words, it was a reference back to your office for you to check back again the amount of the estimate?

A. The letter usually included a memorandum for our source of estimate, that is, to find out where we had—

Q. The action of the navy office on this side, then, was controlled by the amount of that estimate?

A. To that extent, yes.

Mr. ALLEN.—That is all.

On cross-examination by Mr. SHIPLEY said witness testified as follows:

Q. That is, you mean by that, Mr. Spear, it was limited as to the maximum? A. Yes.

Q. The top price was controlled? A. Yes.

Q. Within a certain limit? A. Yes.

(Testimony of Ray Spear.)

Q. Excess of ten per cent. And if the estimate placed upon a requisition originally had not been sufficiently liberal so that the bids called for fell within the estimate, then that necessitated the requisition and the papers going back either to your office or the other department requisition office in which the requisition was originated?

A. Yes, sir, that is correct. [1223—1170]

Q. And then if the particular department, say the department of Steam Engineering, or the Naval Construction department, or any of those departments, other than yourself or in your department, desired to take additional action, either to have an authorization by some superior officer to the purchaser at the increased price, then it was up to you to take that action?

A. Make whatever recommendation with that the matter warranted.

Q. And if, under those conditions, you really needed the article, and it was necessary to get an authorization of the department at Washington, it necessitated the sending of the papers to Washington?

A. Yes, sir, unless it was a requisition on a later date approved by the Commandant. The Commandant could give that authority.

Q. The Commandant had power to do that if it was an emergency?

A. Yes, sir, he can do anything on emergencies.

Q. That was a later date?

A. What I mean, before the starting of this "L" series.

(Testimony of Ray Spear.)

Q. As a matter of fact, the Commandant, as a matter of doing away with details, has power to do anything that is absolutely necessary to be done in the way of an emergency?

A. Yes. As a matter of fact, the Commandant of a naval station can do practically anything he sees fit.

Q. As a matter of fact, he doesn't exercise that power ordinarily unless there is some emergency for immediate action? A. Yes, sir, that is correct.

Q. Ordinarily, under the ordinary procedure, the paper would go back to Washington?

A. Yes, sir.

Q. Where there is sufficient time?

A. Yes, sir. [1224—1171]

Q. And if the original estimate had been inserted in the requisition at a liberal enough price, then that would all have been dispensed with, would it not?

A. Yes, sir, that would have been dispensed with.

Q. And is it not true, as stated by you under your former examination, that the chief purpose of the estimate put upon the requisition in your office is to notify the chiefs of the department in Washington of what you are proposing to do here?

A. Well, that is partly the case.

Q. You stated that was the primary object in your former examination of placing the estimate on there, is that not a fact?

A. Yes, sir, that is a fact. It also answers an additional purpose, however.

Q. There is a secondary purpose of fixing a check?

(Testimony of Ray Spear.)

A. Yes, sir.

Q. Which cannot be exceeded by more than ten per cent? A. Yes, sir, that was the other purpose.

Q. And it does not, however, serve any purpose—

A. At least it gives us that chance to have it referred back in the event there is an increase in price.

Q. But it does not subserve any purpose in so far as limiting the Paymaster who does the purchasing from securing as low a price as possible, does it?

A. Of course, we always try to get it as low as possible.

Q. What I mean is, it isn't put there for the purpose of giving any limitation to the Purchasing Pay Office so far as the low price of the amount actually paid is concerned? A. No, sir.

Q. The purchasing part of it is a function of the Purchasing Pay Office? [1225—1172]

A. Yes, sir.

Q. Limited, as you stated, to that maximum—

A. You understand, the Purchasing Pay Officer is here under the direct supervision of the Commandant of that navy yard, and he can give him such orders as he sees fit.

Q. In other words, it isn't really absolutely binding upon him, you mean? Is that what you mean?

A. How do you mean, sir?

Q. How is that?

A. I don't quite understand your question.

Q. I don't understand your answer.

A. I say, you understand the Purchasing Pay Officer here in Seattle is under the orders of the Com-

(Testimony of Ray Spear.)

mandant of the navy yard at Bremerton.

Q. Oh, it is a co-ordinate branch of your department?

A. Yes, sir, it works in co-ordination with our department.

Q. So far as you are concerned, the Purchasing Pay Officer has the control of the purchases?

A. He hasn't altogether. That isn't correct, Mr. Shipley, because the Purchasing Pay Officer would not dare to do anything or make an award against our recommendation, which would be probably approved by the Commandant of that yard. In other words, he is not independent altogether; he has no independent authority here at all.

Q. No, but so far as the sending out of the proposals and the placing of the awards within the estimate he is not controlled by your office?

A. That is entirely within his discretion.

Q. That is the question I am asking about.

A. Yes, sir. All things being equal, the low bidder gets the [1226—1173] business.

Q. Supposed to? A. Supposed to.

Q. Providing there is a square deal in the Purchasing Paymaster's office? A. Yes, sir.

Q. Now, you testified, if I understood you correctly, that where material was wanted by any of these five departments in the navy yard, that they would send their man over to the storehouse for the purpose of ascertaining whether the articles required were in stock?

A. No, they would usually have a regular sub-

(Testimony of Ray Spear.)

requisition on the theory that the stuff was there, and we would have to eliminate that particular item from that requisition.

Q. They what?

A. They would come over with a sub-requisition for the material they wanted, and usually we would have to eliminate the item we were out of, eliminate it from that particular requisition and furnish the other items.

Q. That would be set aside for them? A. Yes.

Q. The stuff they wanted?

A. The stuff that was on hand.

Q. Then if it was not in stock then a requisition would issue for the purchase?

A. That would probably be one of the steps; but the very next step would be, the foreman, or the man who had been at the storehouse, probably reporting back to his office we didn't have it, he was unable to obtain it.

Q. And the purchase requisition would have to issue then to secure [1227—1174] the articles you didn't have in stock? A. Yes, sir.

Q. That was desired?

A. Unless, of course, we showed them that there was material due under contract and coming in in the near future. You can't make a general rule.

Q. Now, you said that on some occasions the people attached to these other requisition offices in the other departments would inquire from you personally as to prices and information which they required?

A. The officers of the other departments would

(Testimony of Ray Spear.)

frequently call me up, yes.

Q. Now, you will not state to this jury, will you, that these same departments did not also make inquiries to dealers and merchants here in the city direct?

A. No, indeed, sir; I am not making that statement. I think they quite frequently did.

Q. And it was just as proper for them to make that inquiry and ascertain those facts from the merchants and dealers as it was to go to you for it, was it not? A. All information, as a general rule.

Q. In other words, both in your departments and in the other departments, you were free and could properly resort to all means of gaining information that was accessible? A. Yes, sir.

Q. And there is nothing irregular nor improper in that being done, is there, Mr. Spear?

A. No, sir.

Q. Is it not a fact that the best interests of the United States Government was promoted by doing that thing where it was necessary [1228—1175] to gain information?

A. Why, most decidedly, yes, sir.

Q. I will ask you this question, whether there was any impropriety, either in your department or any of these other departments, in taking up the matter with merchants and dealers as to whether they would be able to furnish a particular lot of stock, or a particular article, or class of articles?

A. No, sir, there is nothing in that act itself.

Q. And if that is done for the purpose of obtaining

(Testimony of Ray Spear.)

information it is proper and subserves the interests of the Government, doesn't it?

A. Yes. It depends on what the information is going to be used for, of course.

Q. Well, I said if it is properly done?

A. Surely.

Q. In good faith, I mean? A. Surely.

Q. From the mere fact that information was given the merchants, or acquired from merchants, those facts alone do not indicate any irregularity or impropriety? A. Not a bit, sir.

Q. Calling your attention to the allowance book of the "West Virginia." Mr. Spear, is it possible for you, by referring to that book at this time, to state what the requirements of the other cruisers of the Pacific Fleet was for zinc between the 1st of November, 1907, and the 1st day of June, 1908?

A. Well, I could show you the allowance from January 1st, to July 1st, that is given there in the book, if that would serve the same purpose.

Q. State the requirements. [1229—1176]

A. Oh, I couldn't tell anything from the allowance book what the actual requirements were.

Q. That was the question.

A. No, I couldn't tell a thing by that.

Q. In other words, the allowance is an arbitrary matter that is fixed in the departments at Washington, and, as a matter of fact, actual requirements of the ships when in commission may not be the same as the allowance as prescribed; isn't that correct?

A. Yes, that is correct. The only object of the al-

(Testimony of Ray Spear.)

allowance book is that ships may have this particular fixed amount without any reference to Washington. If they want to exceed that then they have to explain it to Washington.

Q. If a ship's requisition comes in reading at the top of it "Not in excess of allowance," and when you come to notice the item you saw that, as a matter of fact, by comparison with the allowance book, it was "in excess of allowance," then it would be necessary to take the matter up with either the ship's officer who had prepared the requisition to have the requisition remoulded, or else get authority from Washington?

A. We generally draw a red pencil line through it and fix the amount ourselves, and if they complain of that they can take it up with Washington. We do it arbitrarily.

Q. They would either have to come back with a requisition "in excess of allowance," which would require them getting authority, or take the matter up with you and start a new requisition?

A. Yes, sir.

Q. I will ask you this question: Can you tell this jury from this allowance book what the allowance for the ship "California" was at that same period? [1230—1177]

A. The "California" and the "West Virginia" are sister ships, and they might vary in a few details, but be practically the same.

Q. Will you undertake to tell this jury that in the months of November and December of 1907 that the

(Testimony of Ray Spear.)

allowance of the "California" was 2,000 pounds of zinc for six months allowance?

A. No, sir, I wouldn't make that as a positive statement; it might have been amended.

Q. Counsel tried to get you to state, if you could state, from that book what the allowance of those ships were. Now, I ask you whether it is possible or not?

A. I can state the allowance. You asked me what they had drawn or consumed?

Q. No, I ask now if you can tell from that particular book that the allowance for the "California" was only 2,000 pounds of zinc for six months?

A. Well, without any further information I would say that that was the allowance for the "California."

Q. Basing it on what?

A. Basing it on the allowance of the "West Virginia," being a sister ship; but, as I say, that might have been amended in the case of the "California."

Q. As a matter of fact, may that allowance book not have been amended or changed from what it appears there?

A. Oh, indeed, yes. It is 1904, that allowance book. It has probably been amended many, many times.

Q. Now, isn't it a fact at this time you are unable to state that that particular allowance of 2,000 pounds was in force and effect?

A. No, I couldn't state that.

Q. Calling your attention to the ship's requisition for the ship [1231—1178] "California," dated

(Testimony of Ray Spear.)

November 22, 1907, I will call your attention to the fact that this requisition shows "in excess" and to the endorsement upon it reading as follows: "Each boiler uses thirty-five plates at each full renewal, which makes 560 plates, or 5,600 pounds for the ship. If the ship is kept actively at sea there should be approximately one renewal every quarter for each boiler under steam. In view of the early sailing of the vessels it is respectfully requested that the Commandant be asked to authorize immediate issue of these supplies." Underneath that, in a red stamp, "Navy Department, Bureau of Supplies & Accounts, November 30, 1907. To be supplied from the Navy Yard, Puget Sound, Washington." No signature, by some one, "Acting Chief of Bureau." "Request approval in advance. To the General Storekeeper, U. S. Navy Yard, Bremerton, Washington. Approved:—" Signed by somebody, "Captain."

Mr. ALLEN.—Is that the "California" or "Washington," Mr. Shipley?

Mr. SHIPLEY.—This is the "California." And also bearing the seal, the stamp of the Bureau of Steam Engineering, November 30, 1907. Mr. Spear, I will ask you, from that endorsement, whether it does not appear that the requirement of the "California," a sister ship of the one you mentioned, the "West Virginia," I believe it was, was for 5,600 pounds of zinc for a six months allowance?

A. Apparently so. You understand—

Q. And was authorized by the department?

A. You understand, what one engineer would get

(Testimony of Ray Spear.)

along with another engineer would think absolutely inadequate.

Q. But this bears the seal of approval of the authorities at Washington, doesn't it?

A. Yes, sir, apparently so.

Q. It is also true, Mr. Spear, is it not, that where a ship, or a [1232—1179] number of ships are preparing for a long cruise, that a more liberal allowance might be anticipated than where maybe they were going to be tied up at the dock or lay in port for a portion of the time?

A. Yes, It is very seldom, where they take on a six months allowance, it is very seldom a cruise lasts that long.

Q. But where a cruise is anticipated they prepare for it by a larger and more liberal provision?

A. Yes, sir. Not so many times on the ship themselves, as on the supply ships.

Q. And in preparing for stocking these fleets you had those matters in mind? A. Yes, sir.

Mr. SHIPLEY.—That is all. [1233—1180]

On cross-examination by Mr. KERR said witness testified as follows:

Q. And, if I understand you and your testimony, it is the custom of all of the heads of the department and persons in the employ of the Government in any capacity to sign their own correspondence?

A. Yes, sir.

Q. Not to have it signed by a clerk or assistant?

A. That is the usual practice.

Q. But in your office you never permitted the head

(Testimony of Ray Spear.)

clerk to carry on the correspondence with anybody in his own name, did you?

A. In his own name?

Q. In his own name. It was carried on in your own name?

A. He might have done that at times.

Q. Have you permitted it to be done?

A. I think I have at times.

Q. Have you any recollection of any letter ever going out of that office signed by any clerk as such?

A. Oh, yes, quite frequently.

Q. What? A. Yes, quite frequently.

Q. Well, now, if I had some business connection with the navy store over at Bremerton, or had—

A. I mean by that, Mr. Kerr, inter-yard communications.

Q. I say, if I had some business in connection with the store at the navy yard at Bremerton in 1908, I had gone over there, for instance, and wanted to make an inquiry as to the status of meeting business, and you hadn't been there, I would have communicated with your head clerk, or Mr. Meyer?

A. Very likely.

Q. Probably so? A. Very likely. [1234—1181]

Q. And he would have had authority to have answered my inquiry? A. Yes, sir.

Q. But if I wrote the same inquiry over there that I made by word of mouth, and you didn't happen to be there, he couldn't answer that inquiry by mail and use your name? A. No, sir.

Q. Couldn't do that?

(Testimony of Ray Spear.)

A. No, sir. That mail would rest—

Q. Well,—

Mr. ALLEN.—Let him answer.

A. That mail, under ordinary circumstances, unless I wouldn't be back for a few days, would lay on my desk.

Mr. KERR.—Wouldn't make any difference whether it was a mere formal matter or of some extent?

A. There is matters on my desk, Mr. Kerr, that by law are not allowed to be paid without my signature.

Q. I am talking about inquiries such as covered by this letter, and put in evidence?

A. There wouldn't be any objection to him giving you the information and signing his name to it.

Q. That same information given to you would apply to the Rear Admiral in the navy?

A. Yes, sir.

Q. I show you a letter, Charles M. Thomas, initialed SHC.

Mr. KERR.—You see that letter was written by the Rear Admiral—

A. I beg your pardon. He signed that letter himself. I know Admiral Thomas' signature, and I know he signed that.

Q. Did you see him sign it?

A. No, but I have seen a great deal of his signature.

Q. How do you know if you didn't see that signed by him?

A. I know it as I know any signature. This here (showing) means the [1235—1182] man that read

(Testimony of Ray Spear.)

that letter, meaning he O. K.'s the contents of that letter.

Q. You would have thought, if that was true, the stenographer would have put it here on one side, as they usually do, dictated by SHT?

A. I know it is true.

Q. Yet you didn't see it signed. Now, if this letter with these initials of the Rear Admiral Thomas—

A. Those are not the initials of Rear Admiral Thomas there, those are the initials of the Aide that drew up that letter.

Q. Well, whether they are or whether they are not, this letter simply encloses to the Commandant certain printed copies of a circular order and had no particular significance, did it? A. No, sir.

Q. Just purely—

A. No, sir, but the Admiral signed it, didn't he?

Q. I don't believe it, but you say so.

A. All right.

Q. But, at all events, you remember in the spring of 1908 the Carstens Packing Company had a contract to furnish the Government fresh meat at the navy yard for the year 1908, do you not?

A. I remember the firm Carstens Packing Company.

Q. You remember that in the spring of 1908, just before the fleet arrived, and you took the position your department over there, the Storekeeper's department, that the Carstens Packing Company would be required to furnish all the meat that would be required for the cruise of the Atlantic Squadron in

(Testimony of Ray Spear.)

so far as they were outfitting from this place?

The COURT.—He may answer this very shortly, I think.

Mr. KERR.—You remember that, don't you?
[1236—1183]

A. I don't remember they were required to; I think they were asked—

Q. You know they were required to—

A. Let me finish my answer. The matter was taken up with the Carstens Packing Company as to whether they would be willing to supply the fleet. They were not required to do anything, as I remember the matter.

Q. Was it proper, when I went over to the navy yard in the spring of 1908, and you were not there in the office, to have discussed it with your head clerk?

A. Perfectly proper, Mr. Kerr.

Q. Certainly. And you would probably have referred me to him if you had been there?

A. I might possibly.

Mr. KERR.—Now, you say it is not proper for the head clerk, if I had addressed a letter to him and you were not there, to have answered that letter?

A. Oh, no, he might have answered the letter, but he had no right to sign my name to it; that is, I don't remember he had.

Q. Don't you know in the entire records of the Government there was never a letter written signed by Mr. Meyer as head clerk having to do with the Storekeeper's Office?

A. So far as I know there was no letter signed by

(Testimony of Ray Spear.)

Mr. Meyer and had my name signed to it by Mr. Meyer; not that I attach any importance to this particular letter.

Q. How long were you away from the store at any one time?

A. I was away quite frequently for days at the time.

Q. Did you expect all of the inquiries made by merchants and others that went into that office, purely an informal matter, to remain on your desk for days and wait until you returned to sign them personally? [1237—1184] A. No, sir.

Q. How did you expect that I should be informed during your absence?

A. On matters of no particular importance, Mr. Kerr, I expected Mr. Meyer to get that correspondence out.

Q. You expected Mr. Meyer to dictate the correspondence, and so he did, by adding the word "M"?

A. That was apparently the way he did it.

Q. There was nothing wrong with that? You are not complaining about it in this trial?

A. No, sir, I am not complaining about it in this trial, but I said I gave Mr. Meyer no authority to sign my name.

Q. You have seen the only letter that is in here, Lieutenant Spear, with your name and initialed by Mr. Meyer with regard to a purely informal matter. Are you complaining Mr. Meyer was guilty of any wrong in having signed that letter?

A. I am not complaining of anything.

(Testimony of Ray Spear.)

Mr. KERR.—Did you have any responsibilities, Mr. Spear, in connection with your position as Storekeeper? Answer that. Did you have any responsibilities at all?

A. Yes, I had quite a number. I gave a bond for that.

Q. Did you, as an official of the Government, during the time Mr. Meyer was there, and particularly in the spring of 1908, when the Government was engaged in the important business of outfitting a squadron for a six months cruise, devote your attention to the Government's business?

A. Yes, sir, quite a bit.

Q. Did you supervise that business, and did you know it was your duty to know what was going on in the Storekeeper's Office? A. I thought I did.

Q. You thought you did. Well, there was no reason why you shouldn't do it, was there? [1238—1185] A. No, sir.

Q. Was there so much of it that you couldn't, as the responsible head of that department, have kept track of all of it? A. You are mistaken as to that.

Q. Answer my question.

A. I said you are mistaken as to that theory. It would be absolutely impossible for an officer in charge of an office of that description to check every item, or every invoice, or every bill that went over his desk.

Q. Let me ask you if it was—

Mr. ALLEN.—I submit he cuts him off again.

The COURT.—He answered.

(Testimony of Ray Spear.)

A. I indicated what my answer was.

Mr. KERR.—Was there any reason why you, as the head of that department of the Government, whose duty it is under the regulation themselves, to be advised as to the cost and value of material purchased by the Government, of not seeing to it that the prices in requisitions were the regular prices you were there to know?

A. If I could do that there wouldn't be any necessities for any clerks.

Q. Now, what were your laborious and multifarious duties that made it impossible, when all of these requisitions came to you for signature, to have cognizance or knowledge that the law required you to have?

Mr. ALLEN.—Now, I submit this is not redirect or recross-examination. If he had any doubt about what Mr. Spear was doing there he could have asked him before, and he has gone into a fifteen or twenty minute wrangle about matters that are entirely immaterial here.

The COURT.—That matter was gone into.
[1239—1186]

Mr. KERR.—The Government was in the attitude of saying—even down to the Paymaster General of the United States, simply to have ignored the duty that the law put on them. I want to know now why it was that this witness, who was the responsible head of that department, was not advised at all times, as the law required him to be, advised of the value in the market of these various materials.

(Testimony of Ray Spear.)

The COURT.—That was covered in the former cross-examination. The objection is sustained. Note an exception.

Mr. KERR.—Well, now, what did you do, then, in connection with that office, outside of signing the correspondence?

Mr. ALLEN.—That is a repetition of the same thing.

Mr. KERR.—I think I am entitled to find out what he did, your Honor.

The COURT.—No, that was gone over before. Sustained. Note an exception.

Mr. KERR.—In the performance of your duties over there, did your duties require you to do any more, and did you do any more, than sign such documents as were placed before you?

A. Oh, yes—

Mr. ALLEN.—I again submit this is the same thing.

The COURT.—You can answer it.

A. Yes, I dictated a great many of the matters that Mr. Meyer brought before me in completed form; I have outlined the policy of the office on most matters that were brought up that required any special attention.

Mr. KERR.—Did you or did you not, Mr. Spear, consider it as a matter of any importance to the Government what they were paying for the material that was being supplied for these battleships? [1240—1187]

A. Yes, sir, I considered it very important.

(Testimony of Ray Spear.)

Q. Let me ask you if that wasn't the most important thing?

A. No, that was not the important thing at that particular time.

Q. The most important thing was to assemble this stuff in time for this squadron so it could sail without delay? A. That was my primary interest, yes, sir.

Q. And that was so important that you paid no attention at all to what the Government was paying for the supplies to outfit these vessels?

A. I might have lost sight of some items, yes, sir.

Q. In other words, the urgency was so great for supplies to be assembled so the ships could get it you lost sight of the detail as to what it would cost the Government?

A. As to a great many items no doubt.

Q. Yes. That is all.

Mr. SCHLESINGER.—You attach no importance to this letter at all, do you?

A. No, not till I saw it here in this connection.

Mr. SCHLESINGER.—That is all.

Mr. KERR.—I want to ask the witness one more question.

Q. Mr. Spear, will you tell me how many hundred thousand dollars it cost to outfit this squadron, so far as they were outfitted at the Puget Sound Navy Yard, for their cruise around the world?

A. No, I haven't the slightest idea.

Q. Over a million dollars, wasn't it?

A. I don't know.

(Testimony of J. A. Kettlewell.)

Mr. KERR.—That is all.

Mr. ALLEN.—That is all. [1241—1188]

**[Testimony of J. A. Kettlewell, for Plaintiff
(Recalled in Rebuttal).]**

J. A. KETTLEWELL, recalled in rebuttal as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Mr. ALLEN.—Did you ever in the month of January or February either, borrow, or attempt to borrow, from Mr. Goldberg any sum of money, more particularly three sums of \$75.00 each?

A. No, sir, I never asked Mr. Goldberg for any loan, or never received any loan from him.

Q. What were your circumstances personally, then, in the month of January, 1908?

Mr. KERR.—I object to that.

The COURT.—He may answer the question. Note an exception.

A. Why, I deposited this check which you referred to, a thousand and fifty dollars.

Mr. ALLEN.—That bears date of January 22, 1908. You had that in your possession at that time?

A. Yes, sir.

Q. And later placed in your bank? A. Yes, sir.

Mr. KERR.—And it was cashed the 10th of February, 1908.

Mr. ALLEN.—You carried it in your pocket and deposited it on the 10th of February?

A. Yes, sir.

(Testimony of J. A. Kettlewell.)

Mr. KERR.—I object to that as not the best evidence.

Mr. ALLEN.—Well, we offer this in evidence, your Honor.

Mr. KERR.—Object to it as immaterial.

Mr. SCHLESINGER.—Not any part of rebuttal testimony.

The COURT.—Overruled. Exception. [1242—1189]

(Check referred to received in evidence and marked Plaintiff's Exhibit "87.")

Mr. ALLEN.—Your accounts from that time, along in the early part of February, show substantial balances equivalent to that during the month of February, March and April?

Mr. KERR.—Object to it as not proper rebuttal, incompetent, immaterial and not the best evidence.

A. Yes, sir.

The COURT.—Let the answer stand.

Mr. KERR.—Exception.

Mr. ALLEN.—That is all.

On cross-examination by Mr. KERR said witness testified as follows:

Q. Mr. Kettlewell, you told this jury this story, that in November or December, 1907, you suggested to the defendant Meyer that the Great Western Smelting & Refining Company were having some fat contracts with the Government, and that you and Meyer should get in and graft that company. That was your testimony, wasn't it?

A. No, sir, that isn't exactly correct, no, sir.

(Testimony of J. A. Kettlewell.)

Q. That isn't exactly right? A. No, sir.

Q. But you stated that you did suggest to Meyer that you held up the Great Western Smelting & Refining Company? A. No, sir.

Q. Make them come through?

A. No, sir, nothing of that kind; that is misleading.

Q. Well, do you retract now any of the statements you made in your former examination to this jury? [1243—1190] A. No, sir, none of them.

Q. You never talked to Goldberg, you stated, until you had rejected some of his material and he came to your office in January, 1908, was that your testimony?

A. I said that I talked to him at that time, but I didn't say that I hadn't talked to him before that time.

Q. You had never talked to him before that time about holding him up for any money, had you?

A. I never talked to him at any time about holding him up for any money.

Q. Never talked to him?

A. About holding him up for any money, no, sir.

Q. You don't use quite as harsh a term as that. What term would you use?

A. Well, what do you want to know? I don't know just what you asked me.

Q. Well, you started in, you said in November or December, about a scheme to hold up the Great Western Smelting & Refining Company, or to get some money out of them, because they were doing business with the Government. A. No, that is not right.

(Testimony of J. A. Kettlewell.)

Q. What?

A. That is not correct. I never made any statement of that kind, about holding up the Great Western.

Q. Well, did you, according to your theory of the thing, you and Mr. Meyer, put up a job to hold up the Great Western Smelting & Refining Company, or Mr. Goldberg?

A. I don't say that Meyer put up this job.

Q. I asked you, did you and Meyer together put up that kind of a job? [1244—1191]

A. There was a proposition, but it wasn't a scheme to hold up Mr. Goldberg. This suggestion—

Q. Well, to get some money out of them, then?

A. No, the suggestion came from Mr. Goldberg through Meyer to me.

Q. And you never talked to Goldberg about it yourself? A. I certainly did, yes.

Q. Well, you didn't attempt to borrow any money from Goldberg?

A. I never attempted to borrow any money from Goldberg in my life.

Q. You were as willing to have Goldberg bribe you or you bribe Goldberg, but you want the jury to understand you wouldn't borrow any money from Goldberg—that the way you want to be understood?

A. I want it understood this way, that whatever advances were made were made by Goldberg, not by me.

Q. But you didn't go out and corrupt Goldberg, but you claim Goldberg corrupted you?

(Testimony of J. A. Kettlewell.)

A. That was the idea exactly; yes, sir.

Q. And you had been dealing with the Government for a year and a half in the name of a lot of fictitious people, hadn't you?

A. I don't know how long; I forget what the testimony was, but it was correct.

Mr. KERR.—That is all.

Mr. ALLEN.—That is all.

Mr. ALLEN.—The Government rests, your Honor.

WHEREUPON THE GOVERNMENT RESTS
IN CASE IN REBUTTAL. [1245—1192]

Mr. ALLEN.—It is agreed by stipulation of counsel that a certified copy may be substituted for Plaintiff's Exhibit "87."

The COURT.—Very well.

**[Motion for Verdict in Favor of Defendant Corder,
and Order Thereon.]**

Mr. VANDERVEER.—I don't want to be laborious or tiresome to the Court in this matter, but I am honestly of the opinion there is no reason at this time the Court should not direct a motion to direct a verdict in favor of defendant Corder.

The COURT.—I will dispose of that to-morrow morning.

The COURT.—The motion will be denied.

Mr. VANDERVEER.—Exception. [1246—1193]

The foregoing contains all of the testimony and evidence, both oral and documentary, and a full and complete statement of the proceedings in the case. At the close of the argument of the respective counsel the Court charged the jury as follows, and the fol-

lowing are the instructions given by the Court to the jury:

Instructions of the Court to the Jury.

The COURT.

Gentlemen of the Jury: I desire to express to you my appreciation for the patient and diligent manner with which you have attended upon and listened to the proceedings of the trial of this cause. Many of you are busy men and have made and are making a considerable sacrifice for the purpose of discharging your duties of citizenship in the services which you render in the capacity of jurors in attendance upon the sessions of this court.

All parties connected with this case have special duties and functions resting upon them. The United States Attorney and his associate, who represent the Government in this proceeding, and the attorneys for the several defendants each have a special duty to perform; the one side to the Government of the United States, which is the people of the United States, and the other the several defendants who are charged with the violation of the laws of the United States.

The duties of the attorneys are to present to the Court and the jury all material and relevant facts which bear upon the guilt or innocence of the parties charged. In the discharge of these duties these parties necessarily appear as partisans and endeavor to present all of the facts in the most favorable light [1247—1194] to sustain their contention and theory of the matters inquired about in the presenting of the issues here. The duty to you, gentlemen of the jury,

and of the presiding Judge is very different. It is the duty of the Judge to impartially and fairly rule upon every matter that is presented and to endeavor to secure to the Government and the defendants a fair and impartial presentation of every contention which it is claimed will bear upon the issue, and to exclude, so far as it may be possible, matters which are foreign to the issue and which would not aid the jury in analyzing the testimony, or in applying the facts as found to the law, or to conclude with relation to the guilt or innocence of the defendants charged. And you, gentlemen of the jury, have a function which is separate and apart from any of the others named, and which makes you the sole and exclusive judges of the facts which are presented in this case. All these matters of fact are left solely with you. You are the sole judges of the facts. You are to take, however, the law, as applicable to this case, from the Judge.

You have been accepted as trial jurors by the United States attorneys and by the defense in this case because they all had confidence in your integrity, in your fairness, and in the belief that you would approach the issue in this case free from any bias of any kind, either for or against either party and with open minds impressionable to receive the truth as you find it from the evidence in this case; that you will not pass upon the facts in this case or arrive at any conclusion because of any desire to favor one party or the other or because of any feeling of fear either for or against either party, but that with openness of mind and acuteness of conscience approach

the [1248—1195] subject with that feeling of responsibility which the subject demands, keeping in mind the fact that the Government can only be maintained and be of service by the rigid enforcement of its criminal law, not so much out of a spirit of revenge as a desire to impress upon all people that the laws of the country, which are the rules of society, must be lived up to, and if violated, the parties will be punished. If the laws of the country should not be enforced, it would only be a comparatively short time until people would grow to disrespect law, would appreciate that law really means nothing, and this would ultimately result in a condition of anarchy; whereas, a rigid enforcement of law and an appreciation by persons living within the jurisdiction of the country that laws cannot be violated will teach a wholesome respect for law and will make for better citizenship and a better country; and for the defendants, the Government has every consideration, and they are entitled to receive the greatest consideration and not to be convicted unless the evidence shows them to be guilty. The Government would rather have many guilty men escape punishment than that one innocent man should be punished.

The fact that an indictment has been returned in this by the grand jury is no evidence that any crime has been committed. The proceedings of a grand jury is a one-sided affair. There the Government presents its witnesses to show that the criminal laws have been violated. The defendants have no opportunity to present any evidence before a grand jury. Hence the grand jury simply makes its presentment

upon the evidence, which is presented by the Government, and that is simply a paper charge against the defendants which requires them to bring into court their witnesses to explain the facts as disclosed by the [1249—1196] witnesses upon the part of the Government upon the trial of the cause. This has now been done. The United States has presented its witnesses and the defendants have presented their witnesses, and it is now for you to decide in this case from the testimony what is presented here whether the defendants did do the acts set forth in the indictment.

You are further instructed, gentlemen of the jury, that so jealous is the law of the welfare of the citizens of this country, and so careful is it to give every man every reasonable opportunity upon a criminal hearing of this kind, that this same law which makes certain acts crimes, when a man is charged with crime, provides that before he can be found guilty of the offense charged, his guilt must be established beyond every reasonable doubt. The law provides that not only must a person charged with crime be proven guilty beyond every reasonable doubt, but it provides that every person charged with crime shall be presumed to be innocent of the offense charged until he is proven guilty, and that presumption shall continue with him throughout the entire trial and until the jury is convinced beyond every reasonable doubt that he is guilty. And this presumption is not a mere matter of form, but it is one of the rights accorded under the law must be considered and given effect until the testi-

mony which is offered and admitted overcomes this presumption and convinces the jurors of his guilt beyond doubt.

The indictment is rather lengthy, while it contains only one count, it still is necessarily voluminous. The law of our country from its earliest history has required that a party charged with crime shall be given every opportunity to prepare to meet the complaint made by having such definite and explicit information upon which the facts necessary to convict the [1250—1197] defendant are predicated, so that a defendant will not be taken by surprise and not be prepared to answer the charge made. The ultimate facts are, therefore, set out in the indictment and these must be established by the Government to sustain the indictment beyond every reasonable doubt. The indictment not having been read, I will now read it. It reads, after the caption, as follows:

The grand jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the Western District of Washington, upon their oaths present:

That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one Edwin F. Meyer, late of the Western District of Washington, and within the jurisdiction of this court, was an officer of the said United States, and a person acting for and on behalf of the said United States in an official capacity, under and by virtue of authority of a Department of the Government thereof, that is to say, Principal Clerk in the office of the general store-

keeper of the United States Navy Yard, Puget Sound, Washington, in the Navy Department of the United States, and at the time and during the period aforesaid, did act as such and perform the duties of such principal clerk; that by reason of his being such officer and person acting as aforesaid under the law and the regulations theretofore and pursuant to law prescribed and promulgated by the Secretary of the Navy of the said United States for the Government of his department, and the conduct of its officers and clerks, and in force at said time and during the said period, he was vested with sundry powers, duties and discretion, and amongst other things, with power, duty and discretion in suggesting and causing to be determined and in determining from time to time the minimum amount of supplies of [1251—1198] various kinds and descriptions which should be kept on hand by said storekeeper of the navy yard, Puget Sound, in the storehouse in the navy yard aforesaid, in proposing and recommending from time to time the purchase of various kinds of supplies for use in said navy yard, in devising and drafting from time to time specifications of the supplies so proposed and recommended to be purchased as aforesaid, in suggesting and causing to be issued and in issuing requisitions for the purchase thereof and recommending the approval of such requisitions by his superior officers, in suggesting and causing to be placed and in placing on such requisitions the estimated cost of the supplies therein specified, in suggesting and causing to be fixed and in fixing the time designated in said re-

quisitions within which the successful bidder would be required to deliver such supplies, in suggesting and fixing and causing to be fixed the time when such requisitions should be forwarded from the office of said storekeeper of the navy yard, Puget Sound, to the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., and to the United States Navy Pay Office, at Seattle, Washington, in giving out of information in regard to such requisitions, in suggesting and devising ways and means for the receipt at said navy yard, Puget Sound, of such supplies so requisitioned as aforesaid, and in suggesting and recommending the acceptance or rejection of such supplies by the said storekeeper aforesaid.

That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one J. A. Kettlewell, late of the Western District of Washington, and within the jurisdiction of this court, was an officer of the United States, and a person acting for and on behalf of the said United States in an official capacity, under and by virtue of authority of a Department of the Government [1252—1199] thereof, that is to say: Chief Clerk to the Navy Pay Officer in the United States Navy Pay Office at Seattle, Washington, in the Navy Department of the United States, and at said time, and during the period aforesaid, did act as such and perform the duties of such Chief Clerk; that by reason of his being such officer and person acting as aforesaid under the law and the regulations theretofore and pursuant to law prescribed and promulgated by the Secretary or the

Navy of the said United States for the Government of his said department, and the conduct of its officers and clerks, and in force at said time and during said period, he was vested with sundry powers, duties and discretions, and amongst other things, with power, duty and discretion in suggesting the disposition of and disposing of the requisitions for supplies received from the Storekeeper of the Navy Yard, Puget Sound, Washington, and from the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., in giving notice to the public that competitive proposals and bids would be received by the Paymaster of the United States Navy Pay Office at Seattle, Washington, for the purchase of supplies for the Storekeeper, Navy Yard, Puget Sound, in the preparation of and sending out to the public of proposals containing specifications of the supplies covered by said requisitions, in suggesting and devising ways and means of receiving bids and proposals, in recommending the award and awarding contracts to the successful bidders, in suggesting the approval or rejection of the accounts rendered to said Paymaster of the United States Navy Pay Office by such successful bidder, according as such account should be fair and honest or false and fraudulent, in suggesting and recommending the payment or nonpayment of such amounts so claimed by such successful bidder to be due him for supplies furnished according [1253—1200] as such claims were honest and fair or false and fraudulent, in suggesting and causing to be issued, mailed and delivered, and in issuing,

mailing and delivering to the successful bidder the check of the Paymaster of the United States Navy Pay Office at Seattle, Washington, for and in payment of the claims of such successful bidder for supplies so forwarded to the Storekeeper, Navy Yard, Puget Sound, Washington.

That on the 2d day of June, 1908, and for a long time prior thereto, one Emar Goldberg was a resident of Seattle, Washington, in the Western District of Washington, and within the jurisdiction of this court, and was manager of the Seattle branch of the Great Western Smelting and Refining Company of San Francisco, California, a corporation theretofore organized and existing under and by virtue of the laws of the State of California and having offices in San Francisco, Chicago, Seattle, Los Angeles, St. Louis and Vancouver, B. C., said branch of the Great Western Smelting and Refining Company at Seattle, Washington, then and there being engaged in the business of buying and selling scrap iron, tin, zinc, brass, copper and kindred articles.

That on said 2d day of June, A. D. 1908, and for a long time prior thereto, one W. A. Corder was a resident of the city of Seattle, in the Western District of Washington, and within the jurisdiction of this court and was manager of a mercantile business operating under the firm name and style of W. A. Corder Company, and was engaged in the business of buying and selling machinery and machinery supplies.

That on the 2d day of June, A. D. 1908, and for a

long time prior thereto, one E. Silverstone was a resident of Seattle, in the Western District of Washington, and within the jurisdiction of this court, and was engaged in conducting a hotel located [1254—1201] in Seattle, known as the Herald, said E. Silverstone, being then and there a part owner and the manager thereof.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That on or about the 2d day of June, 1908, within the Western District of Washington and within the jurisdiction of this court, the said Edwin F. Meyer and the said J. A. Kettlewell, being such officers and persons in the employ of the Navy Department of the United States as aforesaid, did unlawfully and maliciously conspire, combine and confederate with the said Emar Goldberg, W. A. Corder and E. Silverstone, and with certain other evil-disposed persons whose names are to the grand jurors unknown, knowingly to defraud the United States of divers large sums of money by means of a certain fraudulent scheme devised by the said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone, and which was then and there in process of execution by them; that said fraudulent scheme was first devised, concocted and put in operation in said Western District of Washington by, and between said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone on or about the first day of April, 1908, and was continuously in process of execution in said Western District of Washington by and between the said

Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone, from about the said 1st day of April, 1908, to and including the 2d day of June, 1908, and was then and thereafter in process of execution by and between the said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone, in their acts done to effect the object of said conspiracy.

That the said fraudulent scheme contemplated that, as the [1255—1202] said Great Western Smelting and Refining Company at Seattle, Washington, and said W. A. Corder Company had on hand, on to wit, the said 1st day of April, 1908, a large stock of zinc, rolled sheet, boiler plates, the said Edwin F. Meyer should with fraudulent intent issue, and cause to be issued by the United States Navy Yard, Puget Sound, Washington, a requisition for the purchase for use at said navy yard of a large quantity of zinc, rolled sheet, boiler plates, and should place and cause to be placed in said requisition on the estimated cost price of such zinc, rolled sheet, boiler plates, a price in excess of the fair market value thereof, and should place and cause to be placed in said requisition as the time in which the successful bidder should deliver the said zinc, rolled sheet, boiler plates, to the United States Navy Yard, Puget Sound, so short a time of delivery that none but merchants of Seattle and vicinity could comply with said requirements, and so that none but said merchants of Seattle and vicinity could be able to furnish said zinc, rolled sheet, boiler plates, and would be able to enter into competition

for such contract, and should, with fraudulent intent, so devise and draft the specifications contained in said requisition as to the kind and nature and quality of said zinc, rolled sheet, boiler plates, to be furnished within the said time of delivery, that none but the said Great Western Smelting and Refining Company and said W. A. Corder Company could comply with said requirements.

That from time to time the said Edwin F. Meyer should notify the said J. A. Kettlewell, Emar Goldberg, W. A. Corder and E. Silverstone of the progress of such requisition, so that they, the said J. A. Kettlewell, Emar Goldberg, W. A. Corder and E. Silverstone would be able to prevent legitimate competition. [1256—1203]

That E. Silverstone, without authority so to do, should ostensibly represent a certain alleged mercantile establishment designated as the Fowler Metal Company of San Francisco, but actually represent and act for and in behalf of said Great Western Smelting and Refining Company and said W. A. Corder Company, and should at the proper time offer for filing and file with the United States Navy Pay Office at Seattle, Washington, a proposal and bid to furnish at a price greatly in excess of the fair or true market value thereof, the said zinc, rolled sheet, boiler plates so to be requisitioned for use at the said navy yard, Puget Sound, aforesaid, purporting to be the *proposed* and bid of the Fowler Metal Company of San Francisco, but to be in reality the proposal and bid of said E. Silverstone acting for and in behalf of the Great Western Smelting

and Refining Company and said W. A. Corder Company.

That when said requisition in due course should reach the United States Navy Pay Office at Seattle, Washington, the said J. A. Kettlewell, with fraudulent intent, should send out proposals containing the specifications of the zinc, rolled sheet, boiler plates, so desired to be purchased for the use of the navy yard, Puget Sound, to a list of merchants in Seattle and vicinity, which should contain the names of no merchants other than the Great Western Smelting and Refining Company, Seattle, Washington, W. A. Corder Company, Seattle, Washington and said Fowler Metal Company of San Francisco, except the names of such merchants who were known to said J. A. Kettlewell to be unable to furnish said zinc and would be unable to bid for said contract.

And the said J. A. Kettlewell should, with fraudulent intent, examine the bids and proposals to furnish such zinc, rolled sheet, [1257—1204] boiler plates, so thereafter to be received at the said United States Navy Pay Office, Seattle, Washington, and should ascertain whether or not in fact any merchants other than the said Great Western Smelting and Refining Company, said W. A. Corder Company and the said Fowler Metal Company, had in fact bid therein, and should manipulate and alter and change such bids, if any, that no person, firm or corporation should be awarded the contract to furnish said zinc, other than either the said Great Western Smelting and Refining Company, W. A. Corder Company or Fowler Metal Company, or some

person, firm or corporation acting for and in behalf of either the said Great Western Smelting and Refining Company or said W. A. Corder Company.

That said J. A. Kettlewell should recommend to the Paymaster of the United States Navy Pay Office at Seattle, Washington, and arrange to have accepted the bid and proposal of said Fowler Metal Company so to be offered and filed by the said E. Silverstone, and should arrange to have awarded to said Fowler Metal Company to contract for the furnishing of said zinc, rolled sheet, boiler plates, so to be requisitioned, as aforesaid; that said Edwin F. Meyer should arrange to have said zinc, rolled sheet, boiler plates, which could be forwarded to the United States Navy Yard, Puget Sound, by said Great Western Smelting and Refining Company and said W. A. Corder Company in fulfilment of the Fowler Metal Company contract accepted without question, and said J. A. Kettlewell should recommend and secure the approval of the account as shown by a certain certified bill to be filed, and caused to be filed by said E. Silverstone with the United States Navy Yard, Puget Sound, Washington, purporting to be the certified bill of the Fowler Metal Company, showing delivery of said zinc, rolled sheet, boiler plates, and the acceptance of same at said Navy Yard, Puget Sound, and that none of said zinc, [1258—1205] rolled sheet, boiler plates had been paid for, and should recommend and secure the issuance by the Paymaster at the United States Navy Pay Office at Seattle, Washington, of a check payable to the order of the said Fowler Metal

Company for the amount appearing to be due the said Fowler Metal Company according to the account so to be rendered as aforesaid, and should arrange to have said check delivered to said E. Silverstone or said Emar Goldberg.

And that the object and purpose of said unlawful conspiracy was that said Edwin F. Meyer and said J. A. Kettlewell should so fraudulently exercise said powers, due discretion of their said offices, that there should be no real competition in the bidding for the contract to supply said zinc, rolled sheet, boiler plates, for the use of the United States Navy Yard, Puget Sound, and that the said Great Western Smelting and Refining Company and said W. A. Corder Company, under the name of some one of them, or some other person or corporation for their benefit, would be the only bidders and that the contract to furnish said zinc, rolled sheet, boiler plates, would be obtained by either said Great Western Smelting and Refining Company, W. A. Corder Company or Fowler Metal Company, or by and in the name of some other person or corporation, but secretly for the benefit of said Great Western Smelting and Refining Company and said W. A. Corder Company; and it was further the object and purpose of said unlawful conspiracy, that the United States should pay for said zinc, rolled sheet, boiler plates, a price greatly in excess of its real value, and that said conspirators should obtain for themselves an exorbitant and unreasonable profit in the sale of said zinc, rolled sheet, boiler plates, to the said United States, and it was further the object of said unlawful conspiracy,

that the said person, to wit, Edwin F. Meyer, J. A. [1259—1206] Kettlewell, Emar Goldberg acting for and as the agent and manager of said Great Western Smelting and Refining Company, W. A. Corder, acting for and as the manager of W. A. Corder Company and E. Silverstone, or some of them, should appropriate and convert to their own use such unreasonable profits so fraudulently to be realized from the sale of said zinc, rolled sheet, boiler plates, to the said United States, the proportion in which said unreasonable profits so fraudulently to be realized from the sale of such zinc, rolled sheet, boiler plates, to the United States, should be divided between Edwin Meyer, J. A. Kettlewell, Emar Goldberg, acting for and as the agent and manager of said Great Western Smelting and Refining Company, W. A. Corder, acting for and as the manager of W. A. Corder Company and E. Silverstone, or some of them, being to the grand jurors unknown.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said J. A. Kettlewell, on or about the 1st day of June, 1908, in the Western District of Washington and within the jurisdiction of this court, being such officer and person acting as aforesaid, did then and there deliver and cause to be delivered to the said Emar Goldberg, a *certain signed* by Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, and drawn on the Seattle National Bank, Seattle, Washington, a United States

Depository for the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,417.09), payable to the order of the Fowler Metal Company, which said check was then and there in the words and figures following, to wit: [1260—1207]

	No. 82	U. S. Navy Pay Office.
		Seattle, Washington, May 26th, '08.
United States	The Seattle National Bank, Seattle, Washington.	
Depository.	United States Depository.	
State object		order
for which	Pay to Fowler Metal Co. or bearer	Seventy
drawn.	four hundred and seventeen 09/100 Dollars.	
Zines.1725	\$7417.09/100	ROBERT H. ORR,
		Paymaster, U. S. N.

And the grand jurors aforesaid, upon their oaths aforesaid do further present: That in pursuance of said unlawful conspiracy, combination and agreement, and to effect the object of the same, the said J. A. Kettlewell, on or about the 1st day of June, 1908, in the Western District of Washington and within the jurisdiction of this court, being such officer and person acting as aforesaid, did then and there deliver, and cause to be delivered to the said E. Silverstone, a certain check signed by Robert H. Orr as Paymaster of the United States Navy Pay Office, Seattle, Washington, and drawn on the Seattle National, Seattle, Washington, a United States Depository for the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,417.09), payable to the order of the Fowler Metal Company, which said check was then and there in the words and figures following, to wit:

	No. 82	U. S. Navy Pay Office.
		Seattle, Washington, May 26th, '08.
United States	The Seattle National Bank, Seattle, Washington.	
Depository.	United States Depository.	
State object		order
for which	Pay to Fowler Metal Co. or bearer	Seventy
drawn.	four hundred and seventeen 09/100 Dollars.	
Zincs.1725	\$7417.09	ROBERT H. ORR,
		Paymaster, U. S. N.

[1261—1208]

And the grand jurors aforesaid, upon their oaths aforesaid as further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit: Robert G. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit:

	No. 82	U. S. Navy Pay Office.
		Seattle, Washington, May 26th, '08.
United States	The Seattle National Bank, Seattle, Washington.	
Depository.	United States Depository.	
State object		order
for which	Pay to Fowler Metal Co. or bearer	Seventy
drawn.	four hundred and seventeen 09/100 Dollars.	
Zincs.1725	\$7417.09/100	ROBERT H. ORR,
		Paymaster, U. S. N.

and the said Emar Goldberg as having said check in his possession at the time and place aforesaid,

within the Western District of Washington, and within the jurisdiction of this court, did, with fraudulent intent, knowingly write and cause to be written upon the back of said check, a certain endorsement of the following tenor, to wit:

“Pay to the order of E. Silverstone,

FOWLER METAL CO.

pr. E. S. FOWLER,

Tres. & Mgr.” [1262—1209]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit: Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depositary, which said check was in words and figures following, to wit:

No. 82

U. S. Navy Pay Office.

Seattle, Washington, May 26th, '08.

The Seattle National Bank, Seattle, Washington.

United States Depositary.

United States
Depositary.

State object
for which
drawn.

Zincs.1725

order

Pay to Fowler Metal Co. or ~~bearer~~ Seventy
four hundred and seventeen 09/100 Dollars.

\$7417.09/100

ROBERT H. ORR,

Paymaster, U. S. N.

And on the back of said check was the following:

“Pay to the order of E. Silverstone,

FOWLER METAL CO.

pr. E. S. FOWLER,

Tres. & Mgr.”

and the said Emar Goldberg as having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, with fraudulent intent, did knowingly deliver and cause to be delivered said check to one E. Silverstone. [1263—1210]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit: Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit:

No. 82

U. S. Navy Pay Office.

Seattle, Washington, May 26th, '08.

United States
Depository.

The Seattle National Bank, Seattle, Washington.

United States Depository.

State object
for which
drawn.
Zines.1725Pay to Fowler Metal Co. or ~~bearer~~ order
four hundred and seventeen 09/100 Dollars.
\$7417.09/100ROBERT H. ORR,
Paymaster, U. S. N.

And the said E. Silverstone so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did write upon the back of said check a certain endorsement of the following tenor to wit: "E. Silverstone."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about [1264—1211] the first day of June, 1908, in the Western District of Washington and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit: Robert E. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit:

No. 82

U. S. Navy Pay Office.

Seattle, Washington, May 26th, '08.

The Seattle National Bank, Seattle, Washington.

United States Depository.

United States
Depository.

State object
for which
drawn.
Zines.1725

order

Pay to Fowler Metal Co. or ~~bearer~~ Seventy
four hundred and seventeen 09/100 Dollars.

\$7417.09/100

ROBERT H. ORR,

Paymaster, U. S. N.

And the said E. Silverstone as having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did deposit and cause to be deposited said check in the First National Bank of Seattle, Washington, for the credit of the said E. Silverstone.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, did issue and cause to be issued a check drawn on the First National Bank of Seattle, Washington, payable to the order of the Great [1265—1212] Western Smelting and Refining Company, in the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,417.09) and signed by himself and delivered, and caused to be delivered said check on said date to one Emar Goldberg.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confedera-

tion and agreement, and to effect the object of the same, one Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a check issued and signed by E. Silverstone and drawn on the First National Bank of Seattle, Washington, and payable to the order of the Great Western Smelting and Refining Company, in the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,-417.09), and so having said check in his possession, did then and there endorse on the back of said check the name of the payee thereof, to wit: Great Western Smelting and Refining Company, and did then and there deposit said check to the credit of the Great Western Smelting and Refining Company in the National Bank of Commerce, Seattle, Washington; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ELMER E. TODD,

United States Attorney.

CHARLES T. HUTSON,

Assistant United States Attorney.

Witnesses examined before grand jury:

Henry DeF. Mel.

Ezra Fowler.

A. W. Barnes.

E. W. Brownell.

H. E. House.

L. H. Garrodd.

C. A. Philbrick.

George French.

W. P. Showve.

[1266—1213]

Now, considering the charges made in the indictment, you will understand the meaning of the state-

ments made. It is *alleged*, in substance, that the defendant Meyer was principal clerk of the storekeeper of the navy yard, Puget Sound, Washington, and had power in recommending and proposing various kinds of supplies for use in the navy yard and suggesting and fixing the time within which such supplies should be delivered, and in suggesting and devising means for the receipt of requisitioned supplies; that the defendant Kettlewell was Chief Clerk of the United States Navy Pay Office at Seattle, Washington, and among his duties was discretion in suggesting the disposition and disposing of the requisitions for supplies received from the storekeeper of the navy yard and from the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., and in giving notice to the public that competitive proposals and bids would be received by the paymaster of the United States Navy Pay Office at Seattle, Washington, for the purchase of supplies for the storekeeper at the navy yard, and devising ways and means in receiving bids, recommending the awards and awarding contracts to the successful bidder, in suggesting the approval or rejection of accounts rendered to the said paymaster by such successful bidder, to be due him for supplies furnished, and issuing and delivering checks to the successful bidder for the payment of claims for supplies furnished; and

That the defendant Goldberg was manager of the Great Western Smelting and Refining Company of San Francisco, Cal., having offices in various cities, including Seattle, which company was engaged in the

business of buying and selling scrap iron, tin, zinc, brass, copper, and kindred articles; and [1267—1214]

That W. A. Corder was manager of a mercantile business under the firm name of W. A. Corder and Company, and was engaged in the business of buying and selling mercantile supplies; and

That Silverstone was engaged in conducting a hotel in Seattle, known as the Herald.

That it is charged that Meyer, Kettlewell, Goldberg, Corder and Silverstone conspired and confederated with each other to defraud the Government of the United States by a scheme by which requisitions for supplies was to be made, the time fixed to be so short a period that no one could bid upon it except some of the defendants; that the defendants, having advance information, would have the metal ready for delivery, and a higher price obtained and a larger profit realized, and a check issued for the money on the depositary and the funds obtained.

An essential element of the offense charged is the purpose of the defendants to commit an offense against the United States. The indictment charges that the defendants conspired with each other and others to defraud the United States of divers sums of money by means of a certain fraudulent scheme. The statute under which the indictment is filed reads as follows:

“If two or more persons conspire to defraud the United States in any manner or for any purpose, and one or more of such parties do any act

to effect the conspiracy, all of the parties to such conspiracy shall be liable to a penalty which is provided by statute."

All of the words used in this section convey a meaning which is common to all; there is no technical meaning which can be applied; and, briefly stated,

The indictment charges that the conspiracy described was one to defraud the United States, that is, obtain from the [1268—1215] United States, by means of frauds therein described, sums of money. Under this statute, however, it is not necessary that the United States should have actually suffered pecuniary loss.

The statute under which this indictment is drawn condemns a conspiracy to defraud the United States in any manner. The forms which fraud may take are so various that no exact definition can be given to include all the forms it may assume.

You are instructed that if one represents to another as true that which he knows to be false, and makes the representation in such a way and under such circumstances as to induce a reasonable man to believe the same to be true (and the Government would stand in the same position as a man), and the representation is meant to be acted upon, and the person to whom it is made believes it to be true and acts upon the faith of it and suffers damage thereby, this is fraud.

This brings us to the last element involved in the crime of conspiracy as it is defined in the statute under consideration. That is the overt act, or the element of one or more of the parties to the conspiracy

doing an act to effect its object. At common law it was unnecessary to aver or prove an overt act in furtherance of a conspiracy. The offense was complete when the unlawful agreement was entered into and concluded, although nothing was done in pursuance thereof or to carry it into effect; it was one of the few cases in which the law undertook to punish criminally an unexecuted intent or purpose to commit crime. But under the statute of the United States now under consideration, the doing of some act under the conspiracy is an ingredient of the crime, although the act need not be in itself criminal or [1269—1216] amount to a crime.

To make this statute as clear to you as possible, I will call your attention to its three essential elements. The first element is the act of two or more persons conspiring together; the second is to commit any offense against the United States, in defrauding the Government as charged in the indictment; and the third is what is termed the "overt act," or the element of one or more such parties doing an act to effect the object of the conspiracy.

With respect to the first element, we find that a conspiracy has been described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself unlawful or criminal, by criminal or unlawful means. The common design is the essence of the charge, and while it is necessary, in order to establish a conspiracy, to prove a combination of two or more persons, by concerted action, to accomplish the criminal or unlawful purposes, it is not

necessary to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, other than the general understanding and the details of the plan or means by which the unlawful combination was to be made effective. It is sufficient, if two or more persons, in any manner or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by the [1270—1217] common purpose of accomplishing that end, work together, in any way, in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators. A combination formed by two or more persons, to effect an unlawful end, is a conspiracy, said persons acting under a common purpose to accomplish the end designed. Any one who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes as much a party thereto from that time as if he had originally conspired. Furthermore, where several persons are proved to be combined together for the same illegal purpose, any act done by one of the parties in pursuance of the original concerted plan and with reference to the common object, is, in the contemplation of the law, the act of the whole party, and therefore the proof

of such act will be evidence against any of the parties who were engaged in the same conspiracy. It is also true that any declaration made by one of the parties during the pendency of the illegal enterprise is not only evidence against himself, but is evidence against the other parties, who, when the combination is proved, are as much responsible for such declarations and the acts to which they relate as if made and committed by themselves. This rule, you will understand, applies to the declaration of a co-conspirator, although he may not be on trial, his declarations being equally admissible with those of one under indictment and prosecution.

The confederacy to commit an offense is the gist of the criminality under the law. The law regards the act of unlawful combination and confederation as dangerous to the peace of [1271—1218] society and declares that such combination and confederacy of two or more persons to commit crime, requires an additional restraint to those provided to commit an offense.

In considering the question as to the existence or nonexistence of a conspiracy as charged in the indictment, and the further question as to whether the defendants on trial were connected therewith, in case you find from the evidence such a conspiracy has existed, you will consider all of the facts and circumstances shown by the evidence which tend to show or have any bearing upon the facts as to whether the defendant, or either of them, did confederate and conspire together and therewith show the condition of the mind of the defendant, Meyer, Goldberg, Ket-

tlewell and Corder, and their intent, if any such is shown. In this connection, you are instructed that "a conspiracy in itself necessarily involves the state of mind of the conspirators."

"If one be a conspirator to accomplish an unlawful act, or a lawful act in an unlawful manner, obviously his state of mind involves his purpose, scheme of self-aggrandizement and the like."

It is essential "in both cases, to show the state of mind of one who is alleged to be a conspirator," as bearing upon the question of the condition of the defendants' mind at the time of the alleged acts relied upon in this case, as showing the existence or non-existence of a conspiracy. [1272—1219]

This, of course, cannot be shown by positive testimony, except by the confession of one of the parties to the conspiracy. It is for you to determine from all of the facts and circumstances detailed by the witnesses and disclosed by the records offered and admitted as evidence in this case together with the testimony of Kettlewell, one of the parties charged in this indictment, the state of mind and intent and purpose of the defendants, that if you find they, or any two of them, had any, in forming a combination or conspiracy, if you find one was formed.

You are instructed that every man is presumed to intend the natural and probable consequences of his voluntary acts; and if you should find that such a conspiracy as alleged in the indictment, having for its object or purpose some one or more of the objects and purposes enumerated in the indictment, existed, and that any one of the conspirators, during the life

of such conspiracy, in pursuance of such conspiracy, and to effect the object thereof, set in motion any agency or power which would naturally result in the performance of any one of the overt acts charged in the indictment, and the performance of such act in fact result therefrom, and was so performed during the life of such conspiracy and to effect the object and purpose of such conspiracy, then you are instructed that such defendants intended the natural consequences, and such act would in law be the act of all of the co-conspirators irrespective of which member of the conspiracy set in motion such agency or power or performed such overt act. If you find a conspiracy was entered into between two or more of the defendants charged in the indictment, and that defendant Goldberg was a member of such conspiracy [1273—1220] and that Goldberg, in furtherance of such conspiracy, obtained Silverstone's endorsement on that certain check set out in the indictment and issued to the Fowler Metal Company and cashed the same at the bank, and by reason of such act the defendant Goldberg or his company, the Great Western Smelting and Refining Company, secured the money, such act on the part of Goldberg would be the act of all of the persons who entered such conspiracy, and would be an overt act to effect the object of the conspiracy, if you find beyond a reasonable doubt that a conspiracy was entered into as charged.

It is not essential to constitute the offense of conspiracy that each of the conspirators had knowledge of all of the details of the conspiracy, or of all of the means by which the conspiracy was to be accom-

plished; if there was a common purpose and intent to defraud the United States by the general means set forth in the indictment with a mutual co-operation between the parties to the conspiracy to accomplish such object and one of the conspirators did one of the overt acts charged in the indictment to effect the object of the conspiracy, then all of the members of the confederation or conspiracy would be guilty, even though they did not have knowledge of all of the acts committed by their co-conspirators in the consummation of the object of the conspiracy. A conspiracy has sometimes been compared to a kind of partnership. In a partnership for an unlawful purpose, as in a partnership for a lawful purpose, each one, while acting within the scope of the partnership agreement, is acting for all the partners. The rule is all for each and each for all. But there is some distinctions between a conspiracy partnership and an ordinary business partnership. For instance, a partnership in business usually implies that the profits are to be [1274—1221] divided between the partners; while, if a conspiracy exists, in every other respect, a person might be a party to a conspiracy who did not himself receive a part of the profits as a result of such unlawful confederation. And again, in a business partnership, if one of the partners should drop out by death, or otherwise, the whole partnership is dissolved; but in a conspiracy one might drop out and the conspiracy still remain alive as to the others.

Every conspirator is liable for the overt acts illegally committed in pursuance of the conspiracy,

whether they were active participants or not. Nor is it necessary that the time that the acts are charged to have been done should be proven exactly as alleged. It would be sufficient if they were within three years before the return of the indictment, so far as the consummated act is concerned. You are instructed that if you should find from the evidence in this case that a conspiracy was entered into between two or more of the defendants in this case on or about the 1st day of April, 1908, or at a time prior thereto, and that such confederation or combination and conspiracy continued until the consummation of the acts set out to be done, and it was finally consummated on the 1st day of June, 1908, then you are instructed that the defendants could be found guilty of a conspiracy to defraud, even though the conspiracy was formed more than three years preceding the filing of the indictment. If you find that the overt act which consummated the design of the conspiracy was performed on the 1st day of June, 1908, which was within three years from the time of the returning of this indictment which was on the 31st day of May, 1911. You are further instructed that the presentation of a check from [1275—1222] the paymaster of the U. S. Navy to the bank where the United States funds were on deposit would be an overt act in consummation of a scheme to secure money belonging to the United States. If you should find a conspiracy was entered into as charged in the indictment, and that a check was issued in pursuance to and by reason of such conspiracy, and that such check was endorsed by one of such conspirators, and

the money obtained as alleged in the indictment on the 1st day of June, 1908, then such conspiracy would not be consummated until June 1st, 1908, and all other parties to the conspiracy would be guilty, whether they actually in person participated in the overt act or not.

Whether a conspiracy was entered into or not in this case, between the defendants, or any of them, is a question of fact for you to determine, subject to such rules as may be given you in these instructions to assist you in arriving at a correct conclusion. The evidence on this point is largely circumstantial, except the testimony of the defendant Kettlewell, who testified to the entering into of a conspiracy between himself, the defendant Goldberg and the defendant Meyer, and also involves a consideration of the acts of the several defendants with relation to the acts charged and the course of dealing with each other during the time charged in the indictment, and generally their attitude with relation to the matters charged in this indictment. There are matters for your consideration, together with all of the facts and circumstances as detailed by the witnesses and shown by the exhibits, subject to these instructions.

[1276—1223]

Testimony was permitted to go before you showing the business relations between the Great Western Smelting & Refining Company, of which the defendant Goldberg was local manager at Seattle, having charge of its affairs, and the W. A. Corder Company, of which the defendant Corder was the managing hand, and also with relation to some of the other de-

fendants, and also bids submitted by Goldberg and Corder for their respective companies, as competitors when they were in fact not competitors. This was permitted to go before you for the purpose of surrounding you with the course of dealing of these defendants and placing before your minds as nearly as may be possible all of the facts and circumstances pertaining and relating to the business conduct of the defendants with each other and towards the Government, not as a wrong within itself, but as an element which might throw some light upon the issues in this case. Such evidence, however, cannot be considered against defendant Meyer unless you find beyond a reasonable doubt that a conspiracy was entered into, and to which defendant Meyer was a party.

The Government of the United States is entitled, the same as an individual, to purchase materials or supplies desired at fair and reasonable prices, in the open market on competitive bids, and where it publicly submits proposals for competitive bids to furnish materials or supplies, it is entitled, the same as an individual, to fair and open competition among bidders for the supplying of the same. Hence any collusion, combination, or agreement between a prospective bidder and an employee or employees of the United States, having in charge the preparation of requisitions, or the issuance of proposals for such materials or supplies, to prevent such fair, reasonable and open competition, thereby causing the United States, at the [1277—1224] time and under the circumstances surrounding the purchase, to

pay a price, or prices, in excess of the fair and reasonable market value of the materials and supplies so purchased, and to pay prices in excess of those for which such materials and supplies could have been purchased as the result of competitive bids, would to that extent defraud the United States. Therefore, any act of any one or more of such persons performed during the life of such conspiracy, if you find a conspiracy was formed, and to effect the object of such conspiracy, whether with or without the intent on the part of such conspirator, or some of them, to personally profit thereby at the expense of the United States, for which such member of such conspiracy would be liable.

You are further instructed that merchants, manufacturers and dealers in materials or supplies have a legal right to bid for the supplying of materials to the Government at such prices as they see fit, whether such prices is exorbitant or otherwise, and have the right to obtain by fair means any prices demanded, provided, however, that such dealers or persons so bidding would not have the right by such fraudulent means as charged in the indictment to obtain exorbitant prices.

You are instructed that when a duty is devolved by statute or departmental regulation upon an officer of the United States Navy, or upon a board of officers, the performance of which involves the exercise by such officer, board of officers, or discretion or judgment, then the official act or duty resulting from the exercise of such discretion is final and conclusive unless it is reversed or superseded by some superior

officer or [1278—1225] board, and that the finality of such action would not depend upon the degree of wisdom or skill which may have accompanied the exercise of such discretion.

In this case testimony has been offered bearing upon the usual custom following in the office of the Storekeeper of the navy yard, and also the Navy Pay Office in the city of Seattle. This was admitted for the purpose of surrounding you with all the circumstances and environment of the offices of the General Storekeeper and of the Navy Pay Office in Seattle, thus giving you the benefit of such information in weighing the testimony and analyzing the acts of the defendants, and to be considered by you together with all other surrounding facts and circumstances, which testimony has been given relating to the conduct of the defendants charged in the indictment, and has not been admitted as a justification or excuse of conduct in this case, if you should find from the evidence beyond a reasonable doubt that the defendants or any two of them, did conspire as charged in the indictment for the purpose of defrauding the Government of public funds as charged in this indictment.

And in this connection you are instructed that any official act done or duty performed by the defendant Meyer in relation to the purchase of supplies and material to be used by the United States Navy, or in reference to the preparation of requisitions therefor in discharge of his duties or employment as clerk in the Storekeeper's Office at the Puget Sound Navy Yard, which were done or performed in good faith,

cannot be considered as evidence connecting him with any unlawful conspiracy, regardless whether in fact good or bad judgment was exercised by him. [1279—1226]

You are instructed that it is proper and necessary that bidders for furnishing of materials or supplies to the United States Navy shall be duly informed by the official soliciting bids as to the nature, quality and quantity of the articles to be purchased, and that certain officers of the Navy Department are authorized to accept such bids and award such contracts without advertising; and that rules requiring that contracts for Government supplies must be founded on advertising do not apply to all cases, and do not apply where an emergency or exigency demand immediate action; and whether such emergency exists is a matter to be determined by the proper Government officers. Evidence upon this phase of the matter has been produced before you, and it is for your consideration, together with all the other circumstances and facts developed upon the trial, and should be taken into account in your arriving at your conclusions as to whether or not the charges made in the indictment have been sustained.

You are instructed, that when bids are invited any person may bid to furnish such supplies, but no person shall be received as a contractor who is not a manufacturer or a regular dealer in the articles which he offers to supply; nor shall one party offer more than one bid, either in his own name, or in the name of his clerk, partner, or any other person, and if he does, such bids may be rejected. And if you should

find it to be a fact that more than one bid was offered by either one of the defendants in his own or its own name,— I mean by that the name of his company,— and also in the names of his, its, or their clerk, partner, or subsidiary concern or corporation, that does not of itself constitute a crime. Such act would give the Bureau [1280—1227] of the Navy Yard Department the discretion to reject *and* all such bids.

As stated to you, the defendant Emar Goldberg and the defendant W. A. Corder could offer bids to supply the Navy Department with the articles referred to in the indictment in their own name, and also in the name of subsidiary corporations or companies and would not, so far as this action is concerned, violate any act of Congress. They did, however, assume the risk of having all or any of such bids rejected. The fact they were interested together in bids submitted, and the fact that Goldberg requested or had a bid put in by the name of Fowler Metal Company, which was a subsidiary of the Great Western Smelting & Refining Company, would not of itself constitute an offense. These are simply elements which you may consider, not for the purpose of determining whether the defendants Goldberg and Corder committed separate offenses in submitting such bids, or were guilty of irregular conduct by such actions, but to be considered by you as an element or circumstances together with all of the other circumstances and elements which have been developed upon the trial of this cause, together with the testimony of J. A. Kettlewell, as to whether the defendants did enter into a conspiracy in this case as charged in the indictment,

or joined in such conspiracy after the original confederation and conspiracy had been formed, if you find one was formed.

You are instructed, however, that such facts and circumstances between Goldberg and Kettlewell cannot be considered as evidence against the defendant Meyer unless you find from other circumstances and facts in the case, together with the testimony of the defendant Kettlewell, that a conspiracy was [1281—1228] entered into by the defendants Goldberg, Meyer, and Corder with each other, or with either one or more of the defendants and Kettlewell.

You are further instructed that so far as the defendant Meyer is concerned, and Kettlewell, who is charged in this indictment and against whom it has been discontinued, their official duties by the testimony necessarily involved the performance by them of certain acts pertaining to the preparation of requisitions and the issuance of proposals for the purchase of zinc, the articles charged in the indictment by the Government, and so far as the defendants Goldberg and Corder are concerned, they had each the right on behalf of their respective companies, by fair and honest means, to sell and deliver to the Government zinc, as well as other materials at *bona fide* obtainable prices. You should therefore distinguish between *bona fide* acts and criminal conduct, as any *bona fide* act so performed by the defendants Meyer, Goldberg and Corder in the discharge of their official and representative duties, if you find they performed any, would not constitute either a conspiracy or an act to effect the object of a conspiracy, nor would the fact

that the defendants Goldberg and Corder bid upon or tendered a bid to furnish zinc, as stated, and without any intent to defraud, constitute either a conspiracy or an act to effect the object of the conspiracy charged; but if you should find that the several acts, or any thereof, performed by the several defendants, or any of them, pertaining to the purchase by the United States of the zinc metal plates set out in the indictment were done in pursuance of a conspiracy, and during the life thereof, and to effect some one or more of the objects of such conspiracy, then such act or acts would not be *bona fide*, but would constitute an act or acts [1282—1229] performed in pursuance of such criminal conspiracy or to effect some object thereof, and all of the parties to the conspiracy would be equally liable.

You are instructed that several wrongs never make a right, and if you believe from the evidence presented in this case that a wrong has been committed against the Government in other cases, as disclosed by the evidence in this case, and that it did not receive fair treatment at the hands of bidders and officials, such fact would not be an excuse for releasing the defendants in this case, if you believe beyond a reasonable doubt from the testimony in this case that they did conspire as charged for the purpose of defrauding the Government, nor would such fact, if you have a reasonable doubt as to the truth, justify you in finding the defendants guilty in this case because of such prior irregularity, unless you believed beyond a reasonable doubt from the testimony that they were guilty of the offense as charged in this in-

dictment. Nor, would the fact, if you believe it to be true that any of the defendants supplied zincs to the Government at prices which you may deem too high, be sufficient upon which to predicate a verdict of guilty, unless the evidence in this case convinces you beyond all reasonable doubt that such prices were fixed in pursuance of the conspiracy, set out in the indictment on trial before you.

You are further instructed that if you find beyond a reasonable doubt that a conspiracy was entered into between two of the defendants on trial in this case, or by one or both of the defendants and J. A. Kettlewell, at about the time charged in the indictment, and there is no evidence before the Court that [1283—1230] the defendant Corder entered into such a conspiracy prior to the awarding of the bid in issue in this case on or before the 15th day of April, 1908, but if you should find from the evidence in this case, beyond a reasonable doubt, that after the awarding of such bid to the Fowler Metal Company that defendant Corder joined such conspiracy, if you find beyond a reasonable doubt was entered into prior to that time, with full knowledge of the purpose and intent of such conspiracy, and continued to co-operate in such conspiracy and participate in the profits, then the defendant Corder would be guilty of conspiracy as charged in the indictment whether he did an overt act in furtherance of such conspiracy prior to the 1st day of June, 1908, by cashing the check given by the Government in payment for the zinc referred to in the indictment.

In determining whether any of the defendants

joined the conspiracy, if there was one, after its formation, you will not consider any act occurring subsequent to the first of June, 1908, the date of the accomplishment of the conspiracy, if one was entered into.

Evidence in this case has been permitted to go before you of the existence of the business relations between the defendant Corder and the Great Western Smelting & Refining Company, of which the defendant Goldberg was manager, which business relations contemplated the handling together or in common of zinc plates such as is described in the indictment. The testimony has been further admitted to show of the payment of certain moneys by Corder to the Great Western Smelting & Refining Company, and certain other payments of the Great Western Smelting & Refining Company to Corder and certain [1284—1231] transactions between these parties, prior to and during the time charged in the indictment. This has not been permitted to go before you, gentlemen of the jury, as an offense for which these gentlemen are on trial in this case, but was permitted only for the purpose of surrounding you with as many of the facts and circumstances with relation to these men and their dealings with each other, and to be considered with the other facts which are in evidence in this case in your deliberations upon the testimony as to whether there was a conspiracy and a confederation entered into by these men and others as alleged in the indictment. These defendants are not on trial for any unlawful act other than that charged in the indictment. If you find that the only relation

the defendant Corder had in the matter charged was the fact that he was an owner in common with the Great Western Smelting & Refining Company in the zinc that was sold to the navy yard and received one-half of the proceeds of the sale, but that he did not enter into a conspiracy with the other defendants, or either of them, nor join the conspiracy after one was formed between Kettlewell, Meyer and Goldberg, if you find one was formed, under such circumstances your verdict as to Corder should not be guilty, even though you should find that Meyer and Goldberg are guilty as charged.

Evidence was also permitted to go before you of the extent and nature of former sales made by the Great Western Smelting & Refining Company to the Government, and also sales made of zinc and material such as described in the indictment to the Government, and also sales made by the Great Western Smelting & Refining Company to other persons of like material, and zinc for some period prior to the 1st day of April, and also during [1285—1232] the period specifically covered by this indictment. This was not permitted, gentlemen of the jury, for the purpose of showing to you that there was any irregularity in the dealings between the Great Western Smelting & Refining Company and the Government prior to the time charged in the indictment, and is not to be considered by you for any such purpose, even though you might find from the testimony in this case that greater favoritism had been shown to persons other than the Government dealing with this company than to the Government; nor should you

consider it for the purpose of predicated any verdict upon it in this case, if you should find from the evidence that wrong had been done in the carrying out of some of the transactions covered by the testimony except as outlined in these instructions. That testimony was only received by the court and can only be considered by you as an element together with the other evidence in this case for establishing the price at which like metals described in the indictment were sold within this district and at the time and place in issue in this case, in determining the question as to whether a conspiracy existed between the parties, or any of them, charged in this indictment as alleged, for the purpose of defrauding the Government.

You are instructed, that certain evidence was permitted to go before you with relation to an account upon the books of the Great Western Smelting & Refining Company, known as bonus account. This testimony was permitted to go before you, as stated, with relation to these other items in these instructions, for the purpose of endeavoring to surround you, as nearly as possible, with all of the facts and circumstances and environment of the men named in this indictment and the transaction [1286—1233] which was alleged to have been wrong, so as to enable you to consider all of the evidence and circumstances which have been presented in this case which have any bearing upon this transaction, and which would throw any light upon the conduct of the men, so as to enable you to consider, and conclude as to the right in this case and place the fault, if any lies, where it belongs. In considering this account, you are not

permitted to consider this for the purpose of deciding whether the defendant Goldberg, or any of the defendants, committed a completed wrong in any of these items or charges made on this book, except as you may find they have relation to the offense charged in this indictment on trial here, or any of the expenditures which might be deduced from the accounts unexplained; that is to say, if you should find from the examination of this account that this account was started for a wrongful purpose and was used for a wrongful purpose, you cannot find the defendant Goldberg guilty of any wrong which you might find was done by reason of that account contributing to the culmination of any other offense or irregularity having no reference to the offense here charged.

That was only put in evidence to be considered by you as a circumstance together with all the other facts and circumstances which the testimony has shown to exist. And in considering the purpose for which the account was created you will consider the defendant Goldberg's testimony with relation thereto, and the reasonableness of his story and all other facts in evidence bearing upon that point, together with every other fact and circumstance as detailed by the testimony in this case, including the testimony of J. A. Kettlewell. [1287—1234]

You are further instructed that while this indictment has been returned against Edwin F. Meyer, Emar Goldberg, W. A. Corder, J. A. Kettlewell and E. Silverstone, that the indictment has been dismissed as against Kettlewell and Silverstone, and that only Meyer, Goldberg and Corder are on trial

in this case. The fact that this indictment has been dismissed as against Kettlewell and Silverstone does not affect the other defendants in this case, and they will be amenable to the law if you are satisfied beyond a reasonable doubt that these defendants, or any two of them, conspired or confederated together or with each other or with Kettlewell to defraud the United States in the manner and form as charged in the indictment. If you should find beyond a reasonable doubt that a conspiracy was formed and that in pursuance of such conspiracy one or more of the defendants committed the overt acts mentioned in the indictment, all of the defendants as has been stated to you, would be guilty of such conspiracy.

You are instructed that you cannot find the defendants, or either of them, guilty merely upon probabilities, but your conclusion must be arrived at upon direct testimony, or the proof of such facts or circumstances and concurring conduct of the defendants, or either of them, taken in connection with the direct testimony, which shows a co-operation or collusive association with each other to prove beyond a reasonable doubt that the defendants, or either of them, did conspire with each other, or with one Kettlewell as charged in the indictment. And if you should find from the evidence in this case that any of the defendants named in the indictment herein did in fact combine, confederate and conspire together to defraud the United States in [1288—1235] the manner and by the means set out in the indictment; and that any one or more of said defendants committed an overt act as charged for the purpose as

stated in furtherance of the conspiracy charged, then you should return a verdict of guilty against each of the defendants as you find did so conspire; but if there is a reasonable doubt in your minds as to whether either of said defendants, Edwin F. Meyer, Emar Goldberg or W. A. Corder, then you should return a verdict of not guilty against such of the defendants upon whom a reasonable doubt is predicated in your mind.

You are instructed that an accomplice in the commission of a crime is a competent witness, and the Government has the right to use his testimony in the prosecution for commission of an offense. As to whether the testimony of an accomplice is true or false is a question of fact which like any other controverted question of fact, is submitted solely to you to determine for yourselves. An accomplice is one who is associated with another in the commission of a crime, and is regarded under the law as a principal. The witness Kettlewell, who testified in this case, is what the law calls an accomplice. The testimony of an accomplice comes from a polluted source, and while the rule of law is that a defendant can be convicted on the uncorroborated testimony of an accomplice where the honest judgment of the jurors is satisfied beyond a reasonable doubt, still you should act upon such testimony with great care and caution and subject it to careful examination in the light of other evidence in the case, and you should not convict upon such testimony alone, unless you are satisfied beyond all reasonable doubt of its sufficiency and truth.

If the jurors are not satisfied beyond a reasonable doubt of the truth of the confession and require corroboration of the testimony from other facts and circumstances detailed by the testimony, you are instructed that such corroboration must be upon some material fact connecting the defendants, or some of them, with the commission of the offense, and it would not be sufficient if it merely shows the offense was committed and the circumstances thereof without connecting the defendant, or some of them, with such offense.

In considering Kettlewell's testimony you will take into consideration every fact and circumstance connected with his testimony and analyze each circumstance as detailed by the witnesses with the statement and with each other, and from all of these circumstances and the relation of the parties, their conduct towards each other as disclosed by the testimony, and from all these determine where the truth in this case lies.

Certain evidence has been introduced in this case with relation to certain transactions that are claimed to have taken place with relation to the charges made in the indictment on the 11th day of April, the 15th day of April, and the 30th day of May, 1908. You are instructed, gentlemen, that for the purpose of assisting you in analyzing the testimony with relation to these transactions I have been requested while this evidence was being received, to instruct you the day of the week upon which these several dates occur. You are instructed that the 9th of April, 1908, was Thursday, the 11th day of April, Saturday, and the

15th day of April, Wednesday, and the 30th day of May was Saturday. [1290—1237]

If you find, beyond a reasonable doubt, the facts to be established as charged in the indictment you may find all of the defendants guilty, or you may find the defendant Meyer and Goldberg guilty and find Corder not guilty, or you may find the defendant Goldberg guilty and find the defendants Meyer and Corder not guilty, but to do so you must be convinced beyond a reasonable doubt that the defendant Goldberg and Kettlewell conspired for the purpose of defrauding the Government as charged in the indictment, and have a reasonable doubt as to whether the defendants Meyer and Corder were parties to such conspiracy; or you may find the defendant Goldberg and Corder not guilty and find the defendant Meyer guilty, if you believe beyond a reasonable doubt that the defendants Meyer and Kettlewell entered into a conspiracy as charged in the indictment, and have a reasonable doubt as to whether the defendants Goldberg and Corder entered into such a conspiracy or became parties thereto after a conspiracy was formed, if you find one was formed. You cannot find the defendant Corder guilty unless you find the defendant Goldberg guilty because if Corder entered into such conspiracy, if you find one was formed, it was through the defendant Goldberg who must have been a party thereto.

You are instructed, gentlemen of the jury, that no inference of guilty shall attach to the defendant Corder because he did not take the stand and testify in his own behalf. He was within his legal rights

and the law gives him that privilege, and because he didn't take the stand you shall not count that against him and convict him because of that, but simply find him guilty, if you do find him guilty, upon the evidence which [1291—1238] was offered and admitted, and the circumstances as detailed by the witnesses upon the witness-stand.

Some evidence relating to the honesty and integrity of the defendants Goldberg, Corder and Meyer in the community in which they reside has been introduced in this case. The law permits that class of evidence to be received. It is an exception to the rule which generally excludes hearsay testimony. The theory of the law is that if a man has so lived in the community as to have acquired a reputation for honesty and integrity, the presumption is that he is entitled to it; that is, the presumption is that he is honest, or else he would not have such a reputation, and that is allowed to be introduced. General reputation in the community where a person resides is what people say of him, or what people think of him in that community with relation to his probity, honesty and integrity in dealing with people. The value of such evidence is necessarily dependent upon the opportunity of the witnesses for knowing about the opinion of the people generally in that community with relation to such honesty, and is not determined by what one individual may think from his own dealings with a party; and when you consider any evidence relating to a man who has borne a good reputation for honesty and integrity you are to remember the fact, that he

has borne that reputation, and consider that in determining whether the charge against him is true. "Good character is a fact, like all other facts proven in a case, to be weighed and estimated by the jury, and is especially proper to be shown in a case depending upon circumstantial evidence. In a doubtful case it may turn the scale in favor of the accused. It must not be allowed, however, to confuse [1292—1239] the other testimony in the case, and cannot justify an acquittal where the evidence of guilty is clear and convincing.

In considering the testimony offered in behalf of the reputation of the defendants for honesty and integrity, you will take into consideration the scope of the knowledge of the several witnesses who have testified in that regard, and give it such weight and such credence as you deem the testimony is entitled, taking into account the opportunity of the witness for knowing about such reputation, and if such testimony is sufficient to raise a reasonable doubt in your mind as to whether the defendants, or either of them, did commit the offense charged in the indictment, then you should find them not guilty. But if you are convinced beyond a doubt from all the evidence in the case of the guilt of the defendants, then it is immaterial as to what the reputation was at any other time as to the honesty or integrity, and you should return a verdict of guilty as charged.

In deliberating upon this case, gentlemen of the jury, you will take into consideration every circumstance as detailed by the witnesses upon the witness-stand where these parties have had dealings

with each other, or where they have relation to the issue here, analyze it, and compare them with each other, with the conduct of the men with relation to each other, and with relation to these several circumstances as detailed by the witnesses upon the witness-stand, and from all of these facts taken together with the testimony of the witness Kettlewell, determine where the truth in this case lies; and if you should have a reasonable doubt in your mind as to whether the defendants in this case, or either of them, is guilty of the offense charged [1293—1240] then you should return a verdict of not guilty against such defendants as you will have a reasonable doubt as to his guilt; but if you are convinced beyond a reasonable doubt, from all of these facts and circumstances and the testimony which has been offered and admitted, then it will be your duty to return a verdict of guilty against such defendants against whom you have no reasonable doubt.

You are instructed, gentlemen of the jury, that while the Government must prove the defendants guilty beyond every reasonable doubt such proof need not be made by direct and positive testimony, but may be established by circumstantial evidence concerning the defendants and the transactions charged in the indictment concerning which testimony was received. Circumstantial evidence is legal and competent in a criminal case, and when it is of such a character as to exclude every reasonable hypothesis other than that the defendant is guilty, it is entitled to the same weight as direct evidence. You are instructed that what is meant

by circumstantial evidence in criminal cases is proof of such facts and circumstances connected with and surrounding the commission of the crime charged as tends to show the guilt or innocence of the party charged; and if these facts and circumstances are sufficient to satisfy you of the guilt of the defendants, or either of them, beyond a reasonable doubt, then such evidence is sufficient to authorize a conviction. No general rule can be given as to the quantity of circumstantial evidence which in any case shall be deemed sufficient. All of the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with [1294—1241] every other reasonable conclusion except that of guilt.

You are instructed, gentlemen of the jury, that a reasonable doubt for a trial juror is such a doubt as a man of ordinary prudence, sensibility and decision, in determining an issue of like concern to himself as that before the jury to the defendant, would allow it to have any influence upon him, or make him pause or hesitate in arriving at his determination; but such a doubt should be ascertained only from the want of such evidence to satisfy you beyond a reasonable doubt, or a doubt which is raised by the evidence itself, and should not be merely speculative, imaginary, or conjectural. A juror is satisfied beyond a reasonable doubt if, from a candid consideration of the entire evidence which has been offered and admitted, direct and circumstantial, he has an

abiding conviction of the truth of the charge made.

You gentlemen of the jury, are the sole judges of the facts in this case. You must determine what they are. If I have referred to any facts in this case, either in these instructions or during the course of the trial of this case, it has not been done with a view of indicating any opinion that I may have of any single fact, but simply to illustrate some proposition of law which is involved with defendants. You are to take the law, however, from the Court. You are the sole judges of the facts, and you must determine what they are. You are likewise the sole judges of the credibility of the witnesses who have testified before you, and in determining the weight or credit you desire to attach to the testimony of any witness, you will take into consideration the demeanor of the witness upon the witness-stand, the reasonableness of [1295—1242] the story of the several witnesses who have testified before you, the opportunity of the witnesses for knowing the things about which they have testified, the bias or lack of interest of the several witnesses who have testified before you, and from all of these facts and circumstances, determine where the truth in this case lies. You will apply to each witness who has testified before you the same test that you would apply to any witness or to any other person in the ordinary affairs of life, whose truthfulness or falsity may be under consideration by you, and from all of these determine whether any witness has wilfully testified falsely, or the weights that should be given to the testimony which has been offered here.

If you find from the testimony in this case that any witness has wilfully testified falsely concerning any material matter or fact in this case you would have the right to disregard his entire testimony, except in so far as you may find it corroborated by other credible evidence or circumstances developed or detailed upon the trial of this case.

You will deliberate upon this case as twelve honest men and give it the same consideration as you would want twelve men to give a matter in which you were concerned either as a defendant or as the Government of the United States, and give it that consideration which it should have, and exercise and discharge that conscientious, honest judgment which will leave an abiding conviction with you that you have discharged your full duty.

You will take into consideration all of the evidence that has been offered and admitted, and exhibits which you will [1296—1243] take with you to the jury-room; except two exhibits will not be sent with you to the jury-room, that is, exhibit No. 58 and No. 11; those will not be sent to the jury-room with you.

I would likewise suggest to you, gentlemen of the jury, you disregard the statements of counsel made to each other in the course of the trial or during the argument of this case where the statements are not supported by the testimony; and determine this case solely upon the evidence which has been offered and admitted.

The indictment will be sent with you to the jury-

room, but you are not to consider that as evidence in the case.

Immediately upon retiring to the jury-room you will elect one of your number as foreman, and when you have agreed upon a verdict, you will cause the verdict to be signed by your foreman and report to the Court.

I will submit you five forms of verdict. If you are convinced beyond a reasonable doubt that all of the defendants are guilty, and that all of the allegations in the indictment have been sustained, then the following will be your verdict:

After the caption, "We, the jury in the above-entitled cause, find Edwin F. Meyer, Emar Goldberg and W. A. Corder guilty as charged in the indictment."

If you have a reasonable doubt as to the guilt of all of the defendants, then you will return the following verdict:

"We, the jury in the above-entitled cause, find Edwin F. Meyer, Emar Goldberg and W. A. Corder not guilty." [1297—1244]

If you find that some of the defendants are guilty and some are not guilty, then the following will be your verdict, if you have a reasonable doubt as to the guilt of the defendant Meyer, then this is your verdict:

"We, the jury in the above-entitled cause, find the defendant Emar Goldberg ——" then you will write in the word "Not"—"not guilty," and if you find he is guilty and some of the other defendants not guilty, you will write in the word "is" guilty.

If you find the defendant Goldberg not guilty under the instructions, and find some of the other defendants guilty, this will be your form of verdict:

“We, the jury in the above-entitled cause, find the defendant Emar Goldberg ——” you will write the word “not” in the blank so it will read “not guilty”; and if you should find that he is guilty and some of the other defendants are not guilty, you will write in there “is” guilty.

And if you should find that the defendant Corder is not guilty and some of the other defendants are guilty, then this will be your verdict—unless you find the defendant Goldberg guilty you cannot find the defendant Corder guilty, so if you find the defendant Corder guilty under these instructions you will write in the word “is” in here, and if not guilty write in the word “not” and return the form and report to the Court.

I called you back, gentlemen of the jury, because I omitted to give you one instruction that was requested. I overlooked it, and it is this: I want to instruct you the mere fact that Emar Goldberg loaned money to J. A. Kettlewell at his request and without security would not be sufficient to warrant a verdict of guilty against Goldberg, the fact of the loaning of money of itself, if you find that to be a fact. You [1298—1245] will consider this with all of the other instructions I have given you. You may retire.

INSTRUCTIONS REQUESTED BY DEFENDANTS AND REFUSED.

The defendants requested certain instructions be-

fore the argument and in due time the defendants Edwin F. Meyer and Emar Goldberg requested the Court to give to the jury certain instructions as follows, to wit:

I advise your returning a verdict of not guilty as to the defendant Emar Goldberg, as the evidence introduced by the Government is insufficient to warrant a verdict of guilty.

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal.

I advise you to return a verdict of not guilty as to Emar Goldberg as the evidence conclusively shows that the last overt act occurred more than three years before the filing of the indictment herein.

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal.

I charge you to return a verdict of not guilty as to the defendant Emar Goldberg for the reason that the alleged violation [1299—1246] of section 5440 (Revised Statutes of United States) was committed and completed on the 26th day of May, 1908, and the indictment in this case was not presented until the 31st day of May, 1911.

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time

allowed by law and the rules of the Court, duly excepted to such refusal.

I charge you to return a verdict of not guilty as to the defendant Emar Goldberg, as the undisputed facts show that no overt act to effect the objects of the alleged conspiracy occurred within the period limited by section 1044 (Revised Statutes of United States).

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal.

I charge you that the alleged defense in this case was ended on the date of delivery of the check in question, to wit, on the 26th day of May, 1908, and was barred by the statute of limitation on the 26th day of May, 1911.

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal. [1300—1247]

I charge you before you can return a verdict of guilty you must find that an overt act occurred within three years of the filing of the indictment herein.

In this connection, I charge you that an overt act is an act done to effect the objects of the conspiracy; settlements between the alleged conspirators or with agents for profits, are not overt acts.

The Court refused to give said instruction and the

defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal.

I charge you that under the laws of the United States, an indictment charging an offense, to wit, a conspiracy to defraud the United States, must be presented within three years from the time of the commission of the offense, and if you find from the evidence in this case, that the indictment presented herein was not presented within three years from the date of the commission of the offense, or if you have a reasonable doubt, then it would be your bounden duty to return a verdict of not guilty.

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal.

I charge you that if you have a reasonable doubt as to whether or not the alleged offense here complained of, was committed within three years of the time of the presentment of [1301—1248] the indictment herein, it would be your duty as sworn jurors to give the defendant the benefit of such doubt and return a verdict of not guilty.

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal.

I charge you that the defendant is entitled to in-

terpose any defense allowed him by the law, and this includes the defense of the Statute of Limitations, and you should not be prejudiced against the defendant in the course of such defense; and I further charge you before you can find the defendant guilty, you must find from the evidence beyond all reasonable doubt, that the offense, if committed, occurred within three years from the date of filing of indictment herein.

The Court refused to give said instruction and the defendants Edwin F. Meyer and Emar Goldberg, before the retirement of the jury and within the time allowed by law and the rules of the Court, duly excepted to such refusal.

After the conclusion of the said charge to the jury by the Court and before the retirement of the said jury the said defendants Edwin F. Meyer and Emar Goldberg, then and there duly excepted to the following instruction given by the Court: [1302—1249]

You are instructed that every man is presumed to intend the natural and probable consequences of his voluntary acts; and if you should find that such a conspiracy as alleged in the indictment, having for its object or purpose some one or more of the objects and purposes enumerated in the indictment, existed, and that any one of the conspirators, during the life of such conspiracy, in pursuance of such conspiracy, and to effect the object thereof, set in motion any agency or power which would naturally result in the performance of any one of the overt acts charged in the indictment, and the performance of such act in fact result therefrom, and was so per-

formed during the life of such conspiracy and to effect the object and purpose of such conspiracy, then you are instructed that such defendants intended the natural consequences, and such act would in law be the act of all of the co-conspirators irrespective of which member of the conspiracy set in motion such agency or power or performed such overt act. If you find a conspiracy was entered into between two or more of the defendants charged in the indictment, and that defendant Goldberg was a member of such conspiracy, and that Goldberg, in furtherance of such conspiracy, obtained Silverstone's endorsement on that certain check set out in the indictment and issued to the Fowler Metal Company and cashed the same at the bank, and by reason of such act the defendant Goldberg or his company, the Great Western Smelting & Refining Company, secured the money, such act on the part of Goldberg would be the act of all of the persons who entered such conspiracy, and would be an overt act to effect the object of the conspiracy, if you find beyond a reasonable doubt that a conspiracy was entered into as charged. [1303—1250]

After the jury had returned a verdict of guilty the Court set the 22d day of November, 1913, as the day of sentence. Upon said 22d day of November, 1913, the time of sentence was continued by the Court to the 29th day of November, 1913.

Before sentence was imposed upon the defendants the defendants, Edwin F. Meyer and Emar Goldberg, moved the said Court for a new trial and on the said 29th day of November, 1913, the said motion

for a new trial was by the said Court denied, to which ruling and order of said Court denying said motion for a new trial the said defendants Edwin F. Meyer and Emar Goldberg then and there duly accepted.

Before sentence was imposed upon the defendants, the defendants Edwin F. Meyer and Emar Goldberg presented the following motion in arrest of judgment:

*In the District Court of the United States, in and for
the Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA

vs.

EMAR GOLDBERG, EDWIN F. MEYER et als.,
Defendants.

Motion to Arrest Judgment.

The defendants, Emar Goldberg and Edwin F. Meyer, in the above-entitled cause, before judgment, respectfully move the Court that for error appearing on the face of the indictment and upon the face of the record, that judgment for the United [1304—1251] States of America, be arrested and withheld, and conviction herein rendered be declared null and void.

Said motion is based on the following grounds:

(1) That the indictment herein fails to charge the offense of conspiracy to defraud the United States.

(2) That the indictment does not state facts sufficient to constitute a public offense against the laws

of the United States.

(3) That the indictment fails to charge any offense against the laws of the United States.

(4) That the indictment fails to charge a combination or conspiracy to violate any law of the United States.

(5) That the indictment fails to set forth any act in violation of section 5440 of the Revised Statutes of the United States committed within three years prior to the filing thereof.

(6) That the indictment affirmatively shows that the alleged violation of section 5440 of the Revised Statutes was committed and completed on the 26th day of May, 1908, and said indictment was not presented until the 31st day of May, 1911.

(7) That the indictment shows that the last overt act to effect the object of the alleged conspiracy was committed on the 26th day of May, 1908, or prior thereto.

(8) That the indictment shows that no overt act occurred within three years of the finding of the indictment herein. [1305—1252]

(9) That the indictment shows upon its face that the alleged offense was barred by section 1044 of the Revised Statutes of the United States.

(10) That the said indictment was and is void under section 1044 of the Revised Statutes of the United States.

(11) That the said indictment was found contrary to section 1044 of the Revised Statutes of the United States.

(12) That the said indictment was not found

within three years next after said alleged offense was committed.

(13) That said indictment shows upon its face that the alleged offense was completed on the 26th day of May, 1908, when the check set out in said indictment was actually issued.

(14) That said indictment fails to set forth any overt act as required by section 5440 of the Revised Statutes.

(15) That said indictment is void in this that the time of said conspiracy is laid as on or about the 2d day of June, 1908, and the alleged overt acts therein set forth are alleged to have occurred prior to that date.

WHEREFORE for error appearing on the face of the indictment and upon the face of the record the defendants pray that the judgment upon the verdict be arrested and withheld and conviction herein declared to be null and void.

Dated November 29th, 1913.

MORRIS & SHIPLEY and
ANDREW R. BLACK,

Attorneys for Defendant Edwin F. Meyer.

JAMES A. KERR and
BERT SCHLESINGER,

Attorneys for Defendant Emar Goldberg. [1306—
1253]

And on the said 29th day of November, 1913, the said motion in arrest of judgment was by the said Court denied, to which ruling and order of said Court denying the said motion in arrest of judgment

the said Edwin F. Meyer and Emar Goldberg then and there duly excepted.

The defendants, Edwin F. Meyer and Emar Goldberg, hereby present the foregoing as their Bill of Exceptions herein and respectfully ask that the same may be allowed, signed, sealed and made a part of the record in this case.

Dated this 27th day of January, 1914.

MORRIS & SHIPLEY and
A. R. BLACK,

Attorneys for Defendant Edwin F. Meyer.

KERR & McCORD,
BERT SCHLESINGER,

Attorneys for Defendant Emar Goldberg.

[1307—1254]

**[Stipulation for Settlement and Allowance of Bill of
Exceptions, etc.]**

It is hereby stipulated and agreed that the foregoing BILL OF EXCEPTIONS proposed by the defendants herein may be signed, settled and allowed by the Court. It shall not be necessary to print the exhibits of the Government and the exhibits of the defendants, introduced in evidence in said action and designated herein, but the originals may be attached to the transcript on appeal by the clerk and the same may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit and used on the hearing of said appeal, with the same force and effect as though the same were inserted *verbatim* herein.

Dated January 27th, 1914.

CLAY ALLEN,

United States Attorney.

MORRIS & SHIPLEY and

A. R. BLACK,

Attorneys for Defendant Edwin F. Meyer.

KERR & McCORD,

BERT SCHLESINGER,

Attorneys for Defendant Emar Goldberg.

[Order Allowing Bill of Exceptions.]

This BILL OF EXCEPTIONS, having been duly presented to the Court within the time allowed by law and the rules of the Court within the time extended by order of the Court duly and regularly made, is now signed, sealed and made a part of the Records in the case, and is allowed as correct.

Dated March 14, 1914.

JEREMIAH NETERER,

Judge of the District Court of the United States,
in and for the Western District of Washington,
Northern Division. [1308—1255]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants, Edwin F. Meyer and Emar Goldberg. Vol. 8, Pages 1101 to 1255. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [1309]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2039.

UNITED STATES OF AMERICA

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Petition for Writ of Error.

Your petitioners, Edwin F. Meyer and Emar Goldberg, the above-named defendants, bring this their petition for Writ of Error to the District Court of the United States, in and for the Western District of Washington, and in that behalf your petitioners show:

That on the 29th day of November, 1913, there was made, given and rendered in the above-entitled cause a judgment against your petitioners, wherein and whereby each of your petitioners was adjudged and sentenced to imprisonment, to wit: The said Edwin F. Meyer for a term of 15 months and to pay a fine of Two Thousand Dollars, and the said Emar Goldberg for a term of 15 months and to pay a fine of Two Thousand Dollars; and your petitioners show that they are advised by counsel and they aver that there was and is manifest error in the record and proceedings had in said cause and in the making, giving and rendition and entry of said judgment and sentence to the great injury and damage of your petitioners, all of which errors will be more fully

made to appear by an examination of [1310] the Bill of Exceptions to be tendered and filed and in the Assignment of Errors hereinafter set out and to be presented herein; and to that end thereafter that the said judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioners now pray that a Writ of Error may be issued directed therefrom to the District Court of the United States, for the Western District of Washington, returnable according to law and the practice of this Court, and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignment of errors and all proceedings had in said cause and that the same may be removed to the United States Circuit Court of Appeals for the Ninth Circuit, to the end that error, if any has happened, may be duly corrected and full and speedy justice done your petitioners.

And your petitioners make the assignment of errors presented herewith, upon which they will rely and which will be made to appear by a return of the said record, in obedience to the said Writ.

WHEREFORE, your petitioners pray the issuance of a Writ as herein prayed, and pray that the assignment of errors, presented herewith, may be considered as their assignment of errors upon the Writ, and that the judgment rendered in this cause may be reversed and held for naught, and that said cause be remanded for further proceedings, and that they be awarded [1310½] a *supersedeas* upon

1442 *Edwin F. Meyer and Emar Goldberg*

said judgment and all necessary and proper process, including bail.

EDWIN F. MEYER,
EMAR GOLDBERG,
Petitioners.

MORRIS & SHIPLEY,
ANDREW R. BLACK,
KERR & McCORD and
BERT SCHLESINGER,
Attorneys for Defendants.

[Indorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 24, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [1311]

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 2039.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Order Allowing Writ of Error and Supersedeas.

The defendants Edwin F. Meyer and Emar Goldberg, having heretofore presented to the Court and filed herein their petition, praying for the allowance of a writ of error, and for a *supersedeas* pending the determination of said writ of error, and having filed

with said petition herein, their assignment of errors intended to be urged in support of said writ of error, praying also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, be sent to the Circuit Court of Appeals for the Ninth Judicial Circuit, and that they be awarded a *supersedeas* upon said judgment and all necessary and proper process including bail, and that such proceedings may be had as may be proper in the premises; and it appearing that subsequent to the entering of the final judgment herein the defendants and each of them were by the Court duly admitted to bail, and that the bail of each thereof was by order of Court duly fixed as follows: Edwin F. Meyer, \$5,000; Emar Goldberg, \$5,000, to be conditioned and operate as *supersedeas* bonds pending the determination of the writ of error, to be issued and prosecuted herein, which bonds were duly given, approved by the Court and filed herein. [1312]

In consideration whereof, the Court does allow said petition and further orders that a writ of error herein issue as prayed for, and that the bonds heretofore given and filed herein by said defendants, be continued and shall operate as *supersedeas* bonds, and shall supersede the judgments herein pending the determination on said writ of error.

Done in open court this 24th day of March, 1914:
JEREMIAH NETERER,
District Judge of the United States for Western District of Washington.

[Indorsed]: Order Allowing Writ of Error and Supersedeas. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 24, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [1313]

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

Supersedeas Bond.

Whereas this day at a term of the District Court of the United States for the Western District of Washington, in a suit pending in the said court between the United States of America, and Edwin F. Meyer and Emar Goldberg, defendants, a judgment and sentence was made, given and rendered and entered against the said Edwin F. Meyer and Emar Goldberg; and

Whereas, said above-named defendants, and each of them, have given notice of their intention to apply within thirty days hereafter for the allowance of a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit, and to cause their said conviction and the conviction of each of them, and said cause to be reviewed on writ of error

from the Circuit Court of Appeals of the Ninth Circuit; and

Whereas, on application in that behalf, the Judge of said District Court has fixed a *supersedeas* bond in the sum of \$5,000.00 which this bond is intended to be a compliance with;

Now, therefore, I, Edwin F. Meyer, as principal, and the other subscribers hereto as sureties, jointly and severally acknowledge ourselves held and firmly bound unto the United States of America in the sum of \$5,000.00.

Conditioned that the said Edwin F. Meyer will apply for said writ of error within said 30 days from this date, and shall prosecute his said writ of error to effect, and if he fails to make [1314] his plea good and the judgment of the said Circuit Court of Appeals for the Ninth Circuit shall be finally rendered against him, he will obey, perform and carry out the final judgment of said Circuit Court of Appeals of the United States for the Ninth Circuit and of this Court, upon said writ of error, and any other judgment and order of said Courts in the above-entitled cause, including the payment of any fine and all costs if any, assessed against him, and that he will be and appear before the said United States District Court, before the Western District of Washington, pursuant to such final judgment, and the sentence of said District Court hereinbefore pronounced and entered in said cause.

In testimony whereof, the said principal and sureties have hereunto affixed their signatures this

29th day of November, 1913.

EDW. F. MEYER. [Seal]

H. B. KENNEDY. [Seal]

EVERETT S. DAM. [Seal]

United States of America,

Western District of Washington, King County,—ss.

H. B. Kennedy and Everett S. Dam, the above-named sureties, each for himself deposes and says: That he is a resident of King County, Washington; that he is not an attorney or counselor at law, sheriff, clerk of the Superior Court, or other officer of said Court, and that he is worth the sum of \$10,000.00 in his own right above all debts and liabilities, and exclusive of property exempt from execution, in separate property in the State of Washington.

H. B. KENNEDY.

EVERETT S. DAM.

Subscribed and sworn to before me this 29th day of November, 1913.

[Seal]

ED M. LAKIN,

Deputy Clerk, U. S. Dist. Court, Western Dist. of Washington. [1315]

Form of bond and sufficiency of sureties approved:

WINTER S. MARTIN,

Asst. United States Attorney.

Within bond accepted and approved this 2d day of Dec., 1913.

JEREMIAH NETERER,

District Judge.

[Indorsed]: Supersedeas Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 2, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [1316]

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 2039.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Supersedeas Bond.

WHEREAS, this day at a term of the District Court of the United States for the Western District of Washington, in a suit pending in the said court, between the United States of America and Edwin F. Meyer and Emar Goldberg, defendants, a judgment and sentence was made, given and rendered, and entered against the said Edwin F. Meyer and Emar Goldberg; and

WHEREAS, said above-named defendants, and each of them, have given notice of their intention to apply within 30 days hereafter for the allowance of a Writ of Error to the Circuit Court of Appeals of the United States for the Ninth Circuit, and to cause their said conviction and the conviction of each of them, and said cause to be reviewed on Writ from

the Circuit Court of Appeals of the Ninth Circuit; and

WHEREAS, on application in that behalf, the Judge of said District Court has fixed a supersedeas bond in the sum of \$5,000.00 which this bond is intended to be a compliance with;

NOW, THEREFORE, I, Emar Goldberg, as principal, and the Illinois Surety Company as surety, jointly and severally acknowledge ourselves held and firmly bound unto the United States of America, in the sum of \$5,000.00; [1317]

Conditioned that the said Emar Goldberg will apply for said Writ of Error within said 30 days from this date, and will prosecute the said Writ of Error to effect, and if he fails to make his plea good, and the judgment of said Circuit Court of Appeals for the Ninth Circuit, shall be finally rendered against him, he will obey, perform and carry out the final judgment, including fine and costs assessed, of said Circuit Court of Appeals of the United States for the Ninth Circuit and of this Court, upon said Writ of Error, and any other judgment and order of said Courts in the above-entitled cause, and that he will be and appear before the said United States District Court for the Western District of Washington, pursuant to such final judgment and the sentence of said District Court hereinbefore pronounced and entered in this cause.

In testimony whereof, the said principal and surety have hereunto affixed their signatures, by their duly authorized attorney in fact as to said

surety, this 29th day of November, 1913.

EMAR GOLDBERG. [Seal]

ILLINOIS SURETY COMPANY. [Seal]

[Seal] By FRANK G. OPIE,
Its Attorney in Fact.

Form of bond and sufficiency of surety approved.

CLAY ALLEN,

United States Attorney.

Within bond accepted and approved this 29th day
of November, 1913.

JEREMIAH NETERER,

District Judge.

[Indorsed]: Supersedeas Bond. Filed in the U.
S. District Court Western Dist. of Washington,
Northern Division. Dec. 1, 1913. Frank L. Crosby,
Clerk. By E. M. L., Deputy. [1318]

*In the District Court of the United States, in and for
the Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA

vs.

EMAR GOLDBERG, EDWIN F. MEYER et als.,
Defendants.

**Assignment of Errors of Defendants, Emar Gold-
berg and Edwin F. Meyer.**

Emar Goldberg and Edwin F. Meyer, defendants
in the above-entitled cause, and plaintiffs in error
herein, having petitioned for an order from said
Court permitting them to procure a Writ of Error

to this Court, directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence entered in said cause against said Emar Goldberg and Edwin F. Meyer, now make and file with their said petition the following assignment of errors herein, upon which they will apply for a reversal of said judgment and sentence upon the said writ, and which said errors, and each, and every of them, are to the great detriment, injury and prejudice of the said defendants and in violation of the rights conferred upon them by law; and they say that in the record and proceedings in the above-entitled cause, upon the hearing and determination thereof in the District Court of the United States, for the Western District of Washington, there is manifest error, in this, to wit: [1319]

(1) That the Court erred in refusing to give Instruction No. 32, requested by defendants, as follows:

“I advise your returning a verdict of ‘not guilty’ as to the defendant Emar Goldberg, as the evidence introduced by the Government is insufficient to warrant a verdict of ‘guilty.’ ”

(2) That the Court erred in refusing to give Instruction No. 33, requested by defendants, as follows:

“I advise you to return a verdict of not guilty as to Emar Goldberg as the evidence conclusively shows that the last overt act occurred more than three years before the filing of the indictment herein.”

(3) That the Court erred in refusing to give Instruction No. 34, requested by defendants, as follows:

“I charge you to return a verdict of not guilty

as to the defendant Emar Goldberg for the reason that the alleged violation of Section 5440 (Revised Statutes of the United States) was committed and completed on the 26th day of May, 1908, and the indictment in this case was not presented until the 31st day of May, 1911."

(4) That the Court erred in refusing to give Instruction No. 35, requested by defendants, as follows:

"I charge you to return a verdict of not guilty as to the defendant Emar Goldberg, as the undisputed facts show that no overt act to effect the objects of alleged conspiracy occurred within the period limited by Section 1044 (Revised Statutes of United States)."

(5) That the Court erred in refusing to give Instruction No. 36, requested by defendants, as follows:
[1320]

"I charge you that the alleged offense in this case was ended on the date of delivery of the check in question, to wit, on the 26th day of May, 1908, and was barred by the statute of limitations on the 26th day of May, 1911."

(6) That the Court erred in refusing to give Instruction No. 37, requested by defendants, as follows:

"I charge you that before you can return a verdict of guilty you must find that an overt act occurred within three years of the filing of the indictment herein.

In this connection I charge you that an overt act is an act done to effect the objects of the conspiracy; settlements between the alleged

conspirators or with agents for profits, are not overt acts.”

(7) That the Court erred in refusing to give Instruction No. 38, requested by defendants, as follows:

“I charge you that under the laws of the United States, an indictment charging an offense, to wit, a conspiracy to defraud the United States, must be presented within three years from the time of the commission of the offense, and if you find from the evidence in this case, that the indictment presented herein, was not presented within three years from the date of the commission of the offense, or if you have a reasonable doubt, then it would be your bounden duty to return a verdict of not guilty.”

(8) That the Court erred in refusing to give Instruction No. 39, requested by defendants, as follows:

“I charge you that if you have a reasonable doubt as to whether or not the alleged offense here complained of, was committed within three years of the time of the presentment of the indictment herein, it would be your duty as sworn jurors to give the defendant the benefit of such doubt and return a verdict [1321] of not guilty.”

(9) That the Court erred in refusing to give Instruction No. 40, requested by defendants, as follows:

“I charge you that the defendant is entitled to interpose any defense allowed him by law, and this includes the defense of the statute of limitations, and you should not be prejudiced against the defendant in the course of such de-

fense; and I further charge you before you can find the defendant guilty you must find from the evidence beyond all reasonable doubt, that the offense, if committed, occurred within three years from the date of filing of indictment herein."

(10) The Court erred in overruling and denying defendants' motion in arrest of judgment upon the grounds in said motion taken and assigned, to wit:

"(1) That the indictment herein fails to charge the offense of conspiracy to defraud the United States.

(2) That the indictment does not state facts sufficient to constitute a public offense against the laws of the United States.

(3) That the indictment fails to charge any offense against the laws of the United States.

(4) That the indictment fails to charge a combination or conspiracy to violate any law of the United States.

(5) That the indictment fails to set forth any act in violation of Section 5440 of the Revised Statutes of the United States committed within three years prior to the filing thereof.

(6) That the indictment affirmatively shows that the alleged violation of Section 5440 of the Revised [1322] Statutes was committed and completed on the 26th day of May, 1908, and said indictment was not presented until the 31st day of May, 1911.

(7) That the indictment shows that the last overt act to effect the object of the alleged

conspiracy was committed on the 26th day of May, 1908, or prior thereto.

(8) That the indictment shows that no overt act occurred within three years of the finding of the indictment herein.

(9) That the indictment shows upon its face that the alleged offense was barred by Section 1044 of the Revised Statutes of the United States.

(10) That the said indictment was and is void under Section 1044 of the Revised Statutes of the United States.

(11) That the said indictment was found contrary to Section 1044 of the Revised Statutes of the United States.

(12) That the said indictment was not found within three years next after said alleged offense was committed.

(13) That said indictment shows upon its face that the alleged offense was completed on the 26th day of May, 1908, when the check set out in said indictment was actually issued.

(14) That said indictment fails to set forth any overt act as required by Section 5440 of the Revised Statutes.

(15) That said indictment is void in this, that the time of said conspiracy is laid as on or about the 2d day of June, 1908, and the alleged overt acts therein set forth are alleged to have occurred prior to that date."

(11) The Court erred in overruling defendants' [1323] objection to the following questions pro-

pounded to the witness, Hiram S. House:

“Q. I call your attention to the Government’s Identification No. 21, page 4, which is stamped on the back, Plaintiff’s Exhibit No. 21, 22, and 24, offered for identification. Is that taken from the file of the Great Western Smelting and Refining Company? A. Yes, sir.

Q. Is it now in the same condition in which you received it? A. Yes, sir.

Mr. SCHLESINGER.—We object to the introduction in evidence of exhibit 21, marked for identification, embracing both checks together, embracing checks Nos. 4972 and 4973, upon the ground that they are all irrelevant and immaterial and have nothing to do with any of the issues involved in this case.

The COURT.—Objection overruled and exception allowed.”

(12) The Court erred in overruling defendant’s objection to the following question propounded to the witness, House:

“Q. Directing your attention to sheet No. 525 in the Great Western Smelting and Refining Company’s book, this Government Exhibit No. 28, and the bill for that same transaction, state to the jury just what book that is? * * *

A. This shows on September 30, 1907

Mr. VANDERVEER.—I object to the witness reading from a paper not yet in evidence. This bears date September 30th, 1907.

Mr. ALLEN.—We now offer in evidence exhibit 28.

Mr. KERR.—We object to it on [1324] the ground it is immaterial and has nothing to do with this transaction.

Mr. ALLEN.—I offer in evidence this particular page, sheet No. 525 in the Great Western Smelting and Refining Company's book, and which is now open before the clerk.

The COURT.—Exhibit No. 28?

Mr. ALLEN.—Yes, sir; 525.

The COURT.—What is the objection to it?

Mr VANDERVEER.—The objection that on the face of it, it appears to be immaterial to any issue in this case. It relates to a transaction dated September 1907, has no reference to this particular transaction, and before it is admitted counsel should show the Court, if not to the defendants, what its materiality is.

Mr. ALLEN.—That is what we propose to do.

Mr. SCHLESINGER.—We join in that objection.

Mr. SCHLESINGER.—Now, if your Honor please, I understand the unique proposition now advanced is they are going to show by certain documents the value of certain goods at certain times. I submit that is not competent evidence because the conditions existing at that time are not shown by these exhibits.

The COURT.—The objection is overruled and exception allowed. I think that when you show that they paid eight cents, the Government have a right to show what that was sold for and have the whole transaction before the jury. [1325]

Mr. SCHLESINGER.—Let me ask you a question, please, Mr. Allen, while we are on the subject: Could you say now, taking this lot at 1907, could you say without a knowledge of the conditions surrounding the Great Western Smelting and Refining Company, how much they should have gotten for that same lot of zinc in 1907?

Mr. ALLEN.—We are going to show how much you did get as a matter of fact.

Q. I call your attention to Defendant's Exhibit 'M' offered here on behalf of the defendant, what does that show with reference to the cost of the zinc of that particular car?

Mr. SCHLESINGER.—We object to that upon the ground it is irrelevant, immaterial and incompetent. It does not fix the question as to the price of zinc in Seattle at a particular locality, and he is absolutely disqualified from testifying. He has not been brought in here as a man knowing values, but simply as an expert accountant, and for no other purpose, and this testimony is in no wise binding upon Mr. Goldberg.

Mr. ALLEN.—I call your attention to that part of Defendant's Exhibit 'M' which fixes the price that this Matheson and Heggler sold them nearly a car of zinc in the month of September, 1907. Now, can you, by reference to sheet 359 of the Great Western Smelting and Refining Company's books, 360 and 543, can you state to the jury the price obtained by this concern for

zinc at that time? [1326]

Mr. SCHLESINGER.—We object on the same ground. As I understand the province of an expert accountant, it is to make clear matters of complicated accounts, and point out, and that is what he is put here for. He is not put here to determine what was or what was not a reasonable profit or selling price of this zinc.

Q. Can you, by reference to those books, ascertain the price obtained for zinc at that time, referring more particularly to 259, 360 and 543.

Mr. SCHLESINGER.—This is subject to our objection as to its competency and materiality.

The COURT.—Objection overruled and exception allowed.

Q. Page 359, the Government's Exhibit No. 26, shows on September 4th, 1907, a sale of zinc plates to John Simm Metal Works, 4587 pounds at \$9.50. What was the date of that?

A. September 4th, 1907, 4587 pounds at \$9.50.

Q. Referring to 360, what does that show?

A. Page 360 of Government's Exhibit 26—

Mr. SCHLESINGER.—Same objection.

A. (Continuing.) —shows a sale of September the 4th, 1907, to the Pacific Engineering Company, of 1036 pounds at \$9.55, at \$958.44. Cartage \$3.00, total \$961.44."

(13) The Court erred in overruling defendant's objection to the following testimony:

"Q. I call your attention to Sheet 543, what does that show?

A. Page 543 of Government Exhibit No. 26

shows the sale on November 20, 1907, to the John Simm Metal Works of 8 boxes of zinc plates $1\frac{1}{2} \times 6 \times 12$, 3992 pounds at nine and one-quarter cents, \$369.26.

Mr. ALLEN.—We now offer in evidence these three sheets, 359, 360 and 543, and also sheet 525 with the two checks. [1327]

The COURT.—What are those?

Mr. ALLEN.—Government Exhibit 26.

Mr. KERR.—These parties were all jobbers, Simm and Company were the jobbers in this city.

The COURT.—What exhibit is that? Exhibit 26?

Mr. ALLEN.—Yes, a part of exhibit 26. We offer these in evidence.

The COURT.—Objection overruled and exception allowed.

Mr. SCHLESINGER.—I offer a suggestion. I don't want to be constantly objecting. May it be understood all this line of testimony is deemed objected to upon the grounds heretofore specified by us, without the necessity of having to repeat the objection, and the exception follow.

The COURT.—Yes, sir."

(14) The Court erred in overruling defendant's objection to the following testimony:

"Q. I call your attention to Corder's Book No. 424 and the Great Western Smelting and Refining Company No. 574, of date December 3d, 1907? A. Yes, sir.

Q. What do you find there at sheet 424?

A. This book hasn't been put in evidence.

Q. Where did you find that book?

A. I got it from Mr. Garrett, receiver for the W. A. Corder Company.

Q. It was part of the files of the W. A. Corder Company, was it? A. Yes, sir.

Mr. ALLEN.—We offer it for identification, and offer it in evidence.

Mr. VANDERVEER.—Do you offer the whole book?

Mr. ALLEN.—No, sheet 424. [1328]

Mr. VANDERVEER.—I object as immaterial and irrelevant. I do it for the purpose of presenting a question, a question in which both of us ought to be interested in getting the Court's ruling. [1329]

Mr. VANDERVEER.—Your Honor overrules my objection?

The COURT.—Yes, objection overruled and exception allowed.

Q. That sheet I will then read to the jury, ask you to read it, sheet 424, exhibit 60.

A. Sheet 424, Government's Exhibit 60, sales sheet of W. A. Corder Company, sold to United States Navy Pay Office, order 58, N. S. F., 9 rolls zinc plates one half by twenty-four by thirty six; 9 rolls zinc plates, one half by twenty-four by forty-eight; 9 rolls zinc plates, five eighths by twenty-four by thirty-six; 3713 pounds, 10 and one fourth's cents, \$380.58. Bought by W. A. Corder Company direct. G. W. S. & Ref.

Company, 4328, one half profit.”

(15) The Court erred in admitting the following testimony, over the objection of counsel for defendants:

“(By Mr. RIDDELL.)

Q. You were showing the counter sales of zinc on December 11th. Give the date, number of pounds and price per pound.

A. Date, December the 3rd, 1907, to Lewis, Anderson, Ford & Company, 1 by 6 by 12—

Q. Just give the price per pound?

A. 1125 pounds at ten and one quarter cents.

Q. Sheet 572?

A. Date is December 5th, 1907, sold to the Great Western Smelting and Refining Company, Saratoga, Seattle, Washington, 450 pounds at 11 cents.

Q. 574?

A. December 5th, 1907, Great Western Smelting and Refining Company, 567 pounds at 702 and ten and one-half dollar's freight.

Q. Ten and a half dollar's freight? [1330]

A. Yes, sir.

Q. That is how many pounds?

A. 567.

Q. You don't pretend, Mr. Kerr, that the Steamship Company was a jobber?

Mr. KERR.—I claim this last one is cost price.

Q. 582?

A. Dated December 26th, 1907, to Puget Sound Tug Company, 575 pounds at 11 cents.

Mr. RIDDELL.—I think we could stipulate

when they are jobbers and when they are not.

Mr. VANDERVEER.—Also stipulate sales to the Government had to be shipped in paper boxes, separate, shipped across the Sound.

Mr. KERR.—I will admit these two, 11 cents, were not jobbers.

Mr. SCHLESINGER.—I don't know whether my objection is quite clear, whether my objection covers this line of testimony as to the Corder transaction. May it be understood.

The COURT.—Yes, it is understood.

Q. 58?

A. December 14th, 1907, sold to Lewis, Anderson, Ford & Company, 190 at 10 and one quarter cents.

Q. You say they are jobbers?

A. Yes, they are jobbers.

Q. 593? A. I have got 592 here.

Q. Did you get 592?

A. No, I haven't read it. December 12th, 1907, sold to the Great Western Smelting and Refining Company, 1125½ pounds at 10¼ cents, cost to cut the same, 876.

Q. 593? [1331]

A. Dated December 13th, 1907, Great Western Smelting and Refining Company, 225 pounds, no price, 1656 and freight 281.

Q. 398?

A. Dated December 21st, 1907, sold to Northwestern Steamship Company, 'Lauretta Clara,' 206 pounds at 11 cents.

Q. 206 pounds at 11 cents? A. Yes, sir.

Q. They are not jobbers either?

Mr. KERR.—No, they are not jobbers.

Q. That is to a private individual. 608?

A. Dated December 28th, 1907, sold to Northwestern Steamship Company, Steamship 'Dora,' 478 pounds at 11 cents.

Q. That is again to a private individual.

Mr. KERR.—Those are all in December.

Q. That is on that car that was bought at 8 cents?

A. I don't know on which car this was sold. Some of them were small zins, some of them large.

Mr. VANDERVEER.—It *it not* material we move to have it stricken; it is offered on the theory it will explain the price at which a certain car was sold. The witness says it does not do so."

(16) The Court erred in admitting the following testimony over the objection of counsel for defendants:

"Mr. RIDDELL.—It was subsequent to the receipt of that car.

Q. Turn to Great Western Smelting and Refining sheet, 627.

A. Sheet 627. Great Western Smelting and Refining Company, dated January the 9th, 1908, W. A. Corder Company, Seattle, one half sale zinc plates, December sale, 2904 pounds, \$168.04.

Q. Turn to Corder Company sales, sheet 629.

A. Dated January 13th, 1908, sold to Alaska Steamship Company, steamer 'Olympia,' 468

pounds at 11 cents. [1332]

Mr. KERR.—I concede they were not jobbers.

Q. Sheet 632?

A. Dated January 14th, 1908, sold to Pacific Engineering Company, 411 pounds at 10 cents.

Q. 11 cents the day before and 10 cents this day. Do I understand these people are jobbers or not?

Mr. KERR.—Yes, sir, probably are jobbers.

Q. The sale at 11 cents was to the consumer, and the sale at 10 cents to the jobber?

Mr. KERR.—Yes.

Q. Next sheet 637?

A. Dated January 20th, 1908, sold to Pacific Engineering Company 38 pounds at 10 cents.

Q. 631?

A. Dated February 7th, 1908, sold to Lewis, Anderson, Ford Company, 234 pounds at 10 $\frac{1}{4}$ cents.

Q. 662?

A. Dated February 7th, 1908, sold to City of Seattle, Fire Department, 209 pounds at 10 cents.

Q. That was, I presume, not a jobber. 667?

A. Dated February the 4th, 1908, sold to Alaska Steamship Company, 'Saratoga,' 500 pounds at 9 $\frac{1}{2}$ cents.

Q. 680?

A. Dated February 27th, 1908, P. C. S. F. Company, Pacific Coast steamship 'Coral' 2486 pounds at 9 cents.

Q. 2486 pounds at 9 cents?

A. All of these I am reading refer to zinc plates.

Q. Now 701.

A. Dated March 10, 1908, United States Navy Pay Office requisition No. 336, 4198 pounds at 12½ cents. [1333]

Q. This sale of 4198 pounds at 12½ cents was how many days after the sale of the 2000 pounds at 9 cents? A. 11 days.

Q. We have your requisition 336.

By a JUROR.—I didn't get all the dates, were all these within a period of two or three months?

A. The sale to the Pacific Engineering Company was made February 27th, 1908 at 9 cents. The sale to the United States Navy Pay Office was made on March 10th at 12½ cents."

(17) The Court erred in admitting the following testimony over the objection of counsel for defendants, upon the ground that the same was irrelevant, immaterial and incompetent and not within the issues:

"Q. Now turn to page 716.

A. Page 716, W. A. Corder Company, dated March 21st, 1908, sold United States Navy Pay Office, on the requisition No. 358, says, 'Render invoice to General Storekeeper as follows: 3887 pounds ½ by 24 by 36 rolled zinc plates at 12½ cents, \$485.87. Charge their account, then write above rejected goods, 3,887 pounds ½ by 24 by 36 rolled zinc plates, 11½ cents a pound \$58/31.'

Q. Now, do any of these requisitions which are on that say rejected material? A. Yes, sir.

Q. What are those numbers?

A. Requisition No. 81.

Q. For how much?

A. For about 2,800 pounds, estimated cost 15 cents a pound, \$420.

Q. How much was delivered? 4,421 pounds?

A. 4,421 pounds. [1334]

Q. How much was rejected?

A. 1,617 pounds.

Q. What is the next, the other delivery?

A. On requisition No. 79—

Mr. SCHLESINGER.—All over our objection as irrelevant, immaterial and incompetent.

The COURT.—The same matter I guess the Court has passed on several times.”

(18) The Court erred in admitting the following testimony over the objection of counsel for defendants, upon the ground that the same was irrelevant, immaterial and incompetent:

“Mr. RIDDELL.—Taking up the same sales we were on, continuing. There is a debit at one half cent a pound, relating to other zinc which has been rejected formerly.

Q. What was the date of the other requisition?

A. October the 7th, 1907.

Q. What does the amount call for?

A. 2,800 pounds.

Q. What is the price? A. 15 cents.

Q. How much was delivered?

A. 8,084 pounds.

Q. How much was accepted and how much was rejected? A. 2,824 accepted, 2,280 rejected.

Q. Both these exhibits or bids were made by

whom? A. W. A. Corder Company.

Q. What does the total amounts amount to of these two rejections of the W. A. Corder Company bear to the amount of the new requisition which you have just been discussing?

Mr. KERR.—I object to that as being entirely immaterial and irrelevant [1335] and has nothing to do with this transaction, taking up the rejections of the Corder Company.

The COURT.—What is the materiality?

Mr. RIDDELL.—The materiality is this, in March, 1908, Mr. Meyer put through a requisition to take up just exactly the kind of zinc that was rejected for Corder and lying over there on the dock. All this time the price of zinc had been coming down, the sales show it came down from ten cents a pound until they sold 500 pounds to the steamship company at ten cents. Now he put this through at 12½ cents.

Mr. KERR.—The records show in the month of December, 1907, maybe later than that, we have sold and it was passed through jobbers at 11 cents, ten and a quarter cents, but it has nothing to do with this case.”

(19) The Court erred in denying the motion of counsel for the defense to strike out the above testimony.

(20) The Court erred in admitting the following testimony over the objection of counsel for defendants, upon the ground that it was irrelevant, immaterial and incompetent and not within the issues:

“(By Mr. ALLEN.)

Q. I call *you* attention to folder of the navy yard, folder Number 153, that is requisition No. 153 of Naval Supply Fund, that is a folder taken from the—

Mr. MORRIS.—Is that the folder that is in evidence?

Mr. ALLEN.—Not as yet. Let me change that to 169, requisition 169.

Mr. KERR.—What date is that?

A. Date November 19, 1907. I call your attention to requisition [1336] No. 169 of Navy Supply Fund; did you take this folder from the records of the Navy Department?

A. Yes, sir.

Q. I call your attention to those persons bidding on this particular award?

Mr. KERR.—What date is that?

Mr. ALLEN.—November 19th, 1907.

Mr. KERR.—I object to that as irrelevant, immaterial and incompetent, it has nothing to do with this controversy.

Mr. ALLEN.—I asked to have this stamped for identification.

The COURT.—It will be admitted. Objection overruled and exception allowed.

(Whereupon said folder was introduced in evidence and marked Government's Exhibit 69.)

Mr. KERR.—I object to the introduction of this transaction as not involving in this indictment in any way, too remote, and absolutely incompetent and irrelevant to any issue in this case.

Mr. ALLEN.—That is November 7th, 1907.

The COURT.—Let him answer. Objection overruled and exception allowed.

Q. Who were these bidders on the award made in this particular transaction?

Mr. KERR.—I object to that on the ground it is immaterial who the bidders were.

The COURT.—Objection overruled and exception allowed. Go ahead and explain to the jurors who were the bidders.

A. The Great Western Smelting and Refining Company bid 14 cents a pound. They received the award for 1,500 pounds at 14 cents. Seattle Hardware Company bid on 500 pounds of the 4,000—the requisition calls for 4,000 pounds. The Seattle Hardware [1337] Company bid on 500 pounds at $10\frac{1}{2}$. That amount was awarded to them. The Pacific Engineering Company bid on the entire 4,000 pounds at $10\frac{1}{2}$ a pound. They receive the award of 2,000 pounds at $10\frac{1}{2}$ cents. The W. A. Corder Company bid on the entire amount at $14\frac{1}{2}$ cents. D. Boles Company said: ‘As we don’t handle zinc, are not in position to bid.’ A. Hamback Company said: ‘Unable to bid.’ Swabacher Hardware Company, ‘Unable to supply.’ Western Hardware and Metal Company, ‘Unable to furnish.’ The unsigned bid of John Finn Metal Works at $9\frac{3}{4}$ cents to be delivered in 12 days.

Mr. KERR.—What do you mean by the ‘unsigned’ bid?

A. Well, it states at the top, it is ‘John Finn

Metal Works,' but it has no signature at the bottom and is filled in for $9\frac{3}{4}$ cents a pound. Bid of the Pacific Metal Works at $10\frac{1}{2}$ cents per hundred. Puget Sound Machinery Depot, 'Unable to cope.'

Q. Was any award made in that transaction to either the W. A. Corder Company or to the Great Western Smelting and Refining Company? A. Yes, sir.

Q. What was the amount of that award?

A. 1500 pounds at 14 cents a pound.

Q. Now, can you ascertain, and do you know any place in the books, that have been offered or identified here of the books of either one of these concerns, can you find such pages or parts therein that refer to that transaction and the participation of either of those concerns in that transaction? A. Yes, sir, I can.

Q. What do you find, what books do you find in reference to it? [1338]

A. This is page 565 of Government's Exhibit No. 26, being sales sheet of the Great Western Smelting and Refining Company.

Q. To whom was the award made for 1500 pounds?

A. To the Great Western Smelting and Refining Company."

(21) The Court erred in admitting the following testimony over the objection of counsel for defendants, upon the ground that it was irrelevant, immaterial and incompetent and not within the issues:

"Q. Who were the persons who were bidding

in that for that award?

Mr. KERR.—I object to that on the ground it is irrelevant, incompetent and immaterial, no matter involved in this controversy.

The COURT.—Objection overruled and exception allowed.

A. The requisition is for—

Mr. KERR.—I object to the witness reading from something that is not in evidence.

Mr. ALLEN.—We now offer this in evidence. It has been properly identified. It is 19, I think.

The COURT.—It has been admitted.

Mr. MORRIS.—This is the Pay Office folder. Have you the folder from the Storekeeper's Office of the navy yard? A. I have it here.

Q. 359, No. 19.

Mr. MORRIS.—I want the Storekeeper's folder.

Q. Taking both of these folders, ascertain for us kindly, and give us the bidders and the amounts.

A. You want me to tell what the requisition is for?

Q. Yes, what is the amount?

A. For 1,933 boiler zincs, one-half by 6 by 12. Bidders were [1339] the Great Western Smelting and Refining Company at 12½ cents a pound, to be delivered at once; W. A. Corder Company at 12½ cents a pound to be delivered on one day; American Iron and Metal Company at 13 cents a pound to be delivered at once. A. Hamback, 'Unable to bid. Do not care.'

Q. To whom was the contract awarded?

A. To the Great Western Smelting and Refining Company.

Q. At what figure?

A. 12½ cents a pound."

(22) The Court erred in admitting the following testimony over the objection of counsel for defendants, upon the ground that it was irrelevant, immaterial and incompetent and not within the issues:

"Mr. SCHLESINGER.—We object, if your Honor please, to the introduction in evidence of a check dated June 2d, 1908, number 4,978, in favor of W. A. Corder & Company in the sum of \$4,974.31, and signed by the Great Western Smelting and Refining Company by Emar Goldberg. Our objection to that is based upon the ground that it is subsequent to the alleged conspiracy, and is therefore immaterial, incompetent and irrelevant, it being after the alleged conspiracy had terminated."

(23) The Court erred in admitting the following evidence over the objection of counsel for defendants, upon the ground that it was irrelevant, immaterial and incompetent and not within the issues:

"We make the same objection to check No. 4972, being a check in favor of Emar Goldberg—
The CLERK.—Exhibit '21.'

Mr. SCHLESINGER.—That is Exhibit '21.'
[1340]

The COURT.—Very well.

Mr. SCHLESINGER.—4973, being a check in favor of Emar Goldberg in the sum of \$210

and signed Great Western Smelting and Refining Company, upon the ground that that has nothing to do with the transaction in question, does not relate to the alleged conspiracy and is a transaction occurring after the termination of the alleged conspiracy.”

(24) The Court erred in admitting the following evidence over the objection of counsel for defendants, upon the grounds that it was irrelevant, immaterial and incompetent and not within the issues:

“And the same objection, your Honor please, to check No. 4972 in favor of Emar Goldberg in the sum of \$500 and signed by Great Western Smelting and Refining Company. We make our objection upon that same ground.”

(25) The Court erred in admitting the following evidence over the objection of counsel for defendants, upon the ground that it was irrelevant, immaterial and incompetent and not within the issues:

“And we further, if your Honor please, object to the introduction and admission in evidence of a check No. 1978, dated Seattle, Washington, June 1st—

The COURT.—What exhibit is that?

Mr. SCHLESINGER.—That is exhibit ‘32.’

The COURT.—‘32’ is a check dated June 1st, 1908.

Mr. SCHLESINGER.—Yes, that is a check, a check payable to E. Goldberg in the sum of \$2,109.60, and signed by W. A. Corder Company, by W. A. Corder, manager. Our objection to that is that it has no relation to the

alleged conspiracy, is not an [1341] overt act in furtherance thereof, and is a transaction occurring after the termination of any alleged conspiracy, and therefore is irrelevant, incompetent and immaterial, and this objection, if your Honor please, applies, it may be understood, to all checks and documents introduced in evidence by the Government relating to transactions occurring after the 26th day of May, 1908, and your Honor will make the same ruling heretofore made and we will take an exception."

(26) The Court erred in admitting the following evidence over the objection of counsel for defendants, upon the ground that it was irrelevant, immaterial and incompetent and not within the issues:

"Mr. ALLEN.—'24' has been filed and admitted. Well, we now offer this check under exhibit '24' in evidence, your Honor. It is a check for \$336—

The COURT.—Show it to defendant.

Mr. ALLEN.—Signed by Emar Goldberg—signed by the Great Western people and payable to Emar Goldberg.

Mr. SCHLESINGER.—We object, if your Honor please, to the introduction of this certain evidence upon the ground that it is prior to the conspiracy, alleged conspiracy as laid in the indictment, and therefore is immaterial, irrelevant and incompetent and not within any of the issues.

The COURT.—Admitted, and the jury will consider it is only admitted as a circumstance

as indicating the manner of these various acts.
Has '30' been admitted?"

(27) The Court erred in admitting the introduction of entries appearing in the ledger account of the Fowler Metal Company on the books of the Great Western Smelting and Refining [1342] Company over the objection of counsel for defendant Goldberg.

(28) The Court erred in admitting the following testimony over the objection of counsel for the defendants to which an exception was taken.

"Q. That is the deposit slip of Emar Goldberg in the National Bank of Commerce?

A. Yes, sir.

Q. What memorandum do you next find with reference to this particular transaction?

A. Reading from Government's Exhibit Number '51,' which is a copy—the originals were offered in evidence and these copies put in—reading from Government's Exhibit Number '51,' which is ledger account of Emar Goldberg in the National Bank of Commerce, shows, on the 2d of June, a debit of \$1,479.60.

Mr. SCHLESINGER.—That, of course, your Honor please, is subject to the objection we have heretofore made.

The COURT.—Yes.

Mr. ALLEN.—In other words, this copy of the account of Emar Goldberg with the National Bank of Commerce shows that on June 2d—

A. His account was charged—

Mr. SCHLESINGER.—Object to that on the ground it is immaterial, irrelevant and incompe-

tent, nothing to do with any of the issues involved in this cause.

The COURT.—Objection overruled. Proceed.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—What comparison do you make between that amount which was charged to the account and that of the check referred to here?

Mr. SCHLESINGER.—Same objection, your Honor please. [1343]

The COURT.—Same ruling.

Q. It is \$630, less than the check given him by W. A. Corder Company.

Mr. SCHLESINGER.—Six hundred and how much?

A. Thirty dollars.

Mr. ALLEN.—That went through Emar Goldberg's personal account?"

(29) The Court erred in admitting the following testimony over the objection of counsel for the defendants to which an exception was taken:

"Q. What reference do you next find in the books concerned with reference to this particular transaction?

A. Reading from Government's Exhibit Number '73,' page 9, line 15, under date of June 2d, is a credit to the W. A. Corder Company for \$1,479.60.

Mr. SCHLESINGER.—What was that?

Mr. ALLEN.—\$1,479.60. What memorandum do you next find with reference to this transaction?

A. Reading from Government's Exhibit Number '25,' page 2, which is the ledger account of the W. A. Corder Company on the Great Western Smelting & Refining Company's books, is a credit, under date of June 2d, 1908, for \$1,479.60 cash.

Mr. SCHLESINGER.—Same *object*, if your Honor please, goes to this, of course.

The COURT.—Yes, same ruling.

Mr. ALLEN.—That is a credit, then, upon the books of the Great Western, upon the ledger, a credit to the name of W. A. Corder of \$1,479.60?

A. Yes.

Mr. SCHLESINGER.—Same objection.

The COURT.—Same ruling. [1344]

Mr. ALLEN.—And that check is a check which is represented by the personal check of Emar Goldberg?

Mr. SCHLESINGER.—Same objection, if your Honor please.

The COURT.—Yes.

A. Same amount as charged against his bank account on this same day."

(30) The Court erred in overruling defendants' objection to the following testimony:

"Q. What reference do you find with regard to an excess delivery other than at the navy yard?

A. Government's Exhibit Number '7' states that the bid of the Fowler Metal Company was for 50,000 pounds of zinc. Government's Ex-

hibit Number '27' which is a sales sheet of the Great Western Smelting & Refining Company, page 66, show that they delivered 59,575 pounds.

Mr. VANDERVEER.—This, your Honor, is nothing but argument, and I object to it upon that ground. Counsel asked the witness to state what one thing shows, then what another thing shows, for the purpose of getting before the jury the argument which results from the comparison of two things. It isn't competent for any expert or anybody else to do that.

The COURT.—Let us proceed.

Mr. VANDERVEER.—I would like an exception.

The COURT.—Proceed. Note an exception."

(31) The Court erred in overruling defendants' objection to the following testimony:

"Mr. ALLEN.—Is there any explanation on the books of the company, so far as you could ascertain from that item or any similar item?
[1345]

Mr. SCHLESINGER.—I certainly object to that, because it is calling clearly for his conclusion. He is entitled to give his conclusion, as I understand, upon the basis of some specific figures, but he can't go over a large number of books and say the books don't show this and the books don't show that. I don't think that is material at all.

Mr. SCHLESINGER.—Exception.

The COURT.—Exception allowed.

Mr. ALLEN.—I call your attention to check 4862 out of check book of the Great Western Smelting & Refining Company. Is that a check against the account of Emar Goldberg, bonus account?

A. It so states, yes, sir; \$30.

Q. That is drawn to the Great Western Smelting & Refining Company and drawn to Emar Goldberg? A. Yes, sir.

Mr. SCHLESINGER.—This is all subject to our objection.

The COURT.—Yes, sir.

Mr. ALLEN.—What is the next check you find there?

A. 4863.

Q. By whom is that drawn and to whom?

A. Great Western Smelting & Refining Company, payable to Emar Goldberg. The stub of the check is made to Emar Goldberg, bonus account, for \$500.

Q. Who signed this check in the first instance, whose signature is that? [1346]

A. Signed by Emar Goldberg.

Q. Manager, and payable to his personal order? A. Yes, sir.

Q. Do you find any endorsement on the back with reference to anybody else handling that money? A. No, sir.

Q. What is the next item on the bonus account?

A. Government's Exhibit '73,' page 1, line 13, under date of May 4, 1908, Emar Goldberg,

bonus account, with no explanation, \$160; check No. 4892.

Q. No explanation? A. No, sir.

Q. I will ask you whether or not every other item on that page shows an explanation except that?

Mr. SCHLESINGER.—I object to the question as to no explanation. It is immaterial, incompetent and absolutely irrelevant. The books didn't require any explanation.

The COURT.—Let the witness state what the books show.

Mr. ALLEN.—That is what he is stating, your Honor, that the books don't show anything with regard to it.

The COURT.—Counsel objects to the words 'no explanation' being there.

Mr. ALLEN.—State whether there is in this book any statement there as to the character or purpose of that expenditure?

A. There is none."

(32) The Court erred in overruling defendants' objection to the following testimony:

"Q. What explanation is printed therein with reference to the purposes for which this money was expended? [1347]

Mr. SCHLESINGER.—I object to the question—

A. There is none.

Mr. SCHLESINGER.—One moment—upon the ground that the item does not require ex-

planation, and is calling for a conclusion of the witness.

The COURT.—I would ask you not to use that ‘explanation.’

Mr. ALLEN.—All right. Does that record show anything with reference to the character or purpose for which this money was expended which was drawn from Mr. Goldberg’s bonus account?

A. No, sir.

Q. Take the next item.

A. Under date of May 29, 1908, \$200. Reading from Government’s Exhibit Number ‘73,’ page 8, line 6, is an entry under date of May 29, E. Goldberg, bonus account, \$200, voucher number 4964.”

(33) The Court erred in overruling defendants’ objection to the following questions propounded to the witness J. A. Kettlewell:

“Mr. ALLEN.—Hadrn’t you stated the facts regarding a number of these transactions, if not all of them, before you actually came in contact with the prosecuting officials?

Mr. SCHLESINGER.—We object to that on the ground it calls for a self-serving declaration, it is not redirect examination; it is not rebuttal, and does not tend to prove or disprove any issue here of any kind or character.

The COURT.—I think it is a proper inquiry on cross-examination as to whom the declaration was made first. Proceed.

Mr. ALLEN.—Read the question.

Q. Question repeated. A. Yes. [1348]

Q. Was your statement as made to those secret service men, was it made or coupled with any promise of any kind from any prosecuting official of the United States Government?

Mr. SCHLESINGER.—We object as calling for any opinion of the witness; it is immaterial, incompetent and irrelevant, not redirect examination, and self-serving.

The COURT.—No, I don't think so."

(34) The Court erred in denying defendants' motion for an instruction for acquittal peremptorily at the close of the Government's case.

(35) The Court erred in denying defendants' motion to strike out the various exhibits admitted in evidence bearing date subsequent to May 26, 1908, to which exceptions were duly taken.

(36) The Court erred in giving the following instruction over the objection of counsel for the defendants:

"You are instructed that every man is presumed to intend the natural and probable consequences of his voluntary acts; and if you should find that such a conspiracy as alleged in the indictment, having for its object or purpose some one or more of the objects and purposes enumerated in the indictment, existed, and that any one of the conspirators, during the life of such conspiracy, in pursuance of such conspiracy, and to effect the object thereof, set in motion any agency or power which would naturally result in the performance of any one of the overt

acts charged in the indictment, and the performance of such act in fact result therefrom, and was so performed during [1349] *during* the life of such conspiracy and to effect the object and purpose of such conspiracy, then you are instructed that such defendants intended the natural consequences, and such act would in law be the act of all of the co-conspirators irrespective of which member of the conspiracy set in motion such agency or power or performed such overt act. If you find a conspiracy was entered into between two or more of the defendants charged in the indictment, and that defendant Goldberg was a member of such conspiracy, and that Goldberg, in furtherance of such conspiracy, obtained Silverstone's endorsement on that certain check set out in the indictment and issued to the Fowler Metal Company and cashed the same at the bank, and by reason of such act the defendant Goldberg, or his company, the Great Western Smelting and Refining Company, secured the money, such act on the part of Goldberg would be the act of all of the persons who entered such conspiracy, would be an overt act to effect the object of the conspiracy, if you find beyond a reasonable doubt that a conspiracy was entered into as charged."

(37) The Court erred in making, giving and rendering judgment against the defendants for the reason that the said indictment does not state any crime or any offense against any law of the United States and for the reasons taken and assigned by the de-

defendants in their motion in arrest of judgment.

(38) The Court erred in sentencing the defendants without their being first lawfully adjudged guilty of any crime.

(39) The Court erred in pronouncing sentence of imprisonment against the said defendants. [1350]

Exceptions were duly taken to each and every of the above specified rulings.

WHEREFORE, and on account of said manifest errors, and each of them, all of which errors appear upon the record in said cause, the said defendants, EDWIN F. MEYER and EMAR GOLDBERG, pray that the decree and order of the said District Court of the United States for the Western District of Washington, be reversed.

MORRIS & SHIPLEY,

A. R. BLACK,

KERR & McCORD, and

BERT SCHLESINGER,

Attorneys for Defendants, Edwin F. Meyer and Emar Goldberg.

[Endorsed]: Assignment of Errors of Defendants Edwin F. Meyer and Emar Goldberg. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 24, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [1351]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

**Stipulation [as to Transcript of Record on Writ of
Error].**

It is hereby stipulated by and between the parties hereto through their respective attorneys:

1. That the following designated papers, together with the original citation, the original writ of error, and all of plaintiff's and defendants' exhibits, comprise all the papers, exhibits, depositions or other proceedings, which are necessary to the hearing of said cause upon writ of error in the United States Circuit Court of Appeals, and that only such papers need be included in the record of said Court:

Indictment, filed May 31, 1911.

Arraignment of defendant Meyer (June 12, 1911).

Arraignment of defendant Goldberg (June 12, 1911).

Plea of not guilty of defendant Meyer (August 11, 1911).

Plea of not guilty of defendant Goldberg (August 11, 1911).

Motion for transfer of cause, filed August 11, 1911.

Order transferring cause, September 29, 1911.

Appearance of Bert Schlesinger and Kerr & McCord
as attorneys for Goldberg, filed October 24, 1913.

Appearance of Morris & Shipley and Andrew R.
Black as attorneys for defendant Meyer, filed
October 27, 1913.

Verdict of guilty (Meyer) (filed November 12, 1913).
[1352]

Verdict of guilty (Goldberg) (filed November 12,
1913).

Journal entry of order fixing bail of each defendant
at \$5,000 (November 12, 1913).

Order giving defendants until December 22, 1913, to
file proposed bill of exceptions, filed November
22, 1913.

Journal entry of November 29, 1913, showing hearing
on motion for new trial.

Journal entry of November 29, 1913, denying motion
for new trial.

Motion in arrest of judgment, filed November 29,
1913.

Journal entry of November 29, 1913, denying motion
in arrest of judgment.

Judgment and sentence entered November 29, 1913
(against both defendants).

Order extending time for filing proposed bill of ex-
ceptions to January 22, 1914, filed December 17,
1913.

Order extending time for filing bill of exceptions to
February 22, 1914, filed January 5, 1914.

District Attorney's acknowledgment of service of
copy of proposed bill of exceptions, filed Janu-
ary 27, 1914.

Stipulation to attach original exhibits to bill of exceptions, filed January 27, 1914.

Order to attach original exhibits to bill of exceptions, filed January 27, 1914.

Stipulation filed February 11, 1914, with reference to presenting bill of exceptions to Judge.

Order extending time of District Attorney until March 10, 1914, to propose and file proposed amendments to bill of exceptions, filed February 25, 1914.

Bill of exceptions. [1353]

Petition for writ of error, filed March 24, 1914.

Order allowing writ of error, filed March 24, 1914.

Supersedeas Bond defendant Meyer, filed November 29, 1913.

Supersedeas Bond defendant Goldberg, filed November 29, 1913, together with general certificate of Illinois Surety Company.

Assignment of error, filed March 24, 1914.

Writ of error, filed March 24, 1914.

Citation, filed March 30, 1914.

Stipulation as to record and exhibits.

2. That it shall not be necessary to print the exhibits herein, but said exhibits may be attached to said record by the Clerk and forwarded to the Circuit Court of Appeals.

Dated this 30th day of March, 1914.

CLAY ALLEN,

District Attorney.

MORRIS & SHIPLEY, and

ANDREW R. BLACK,

Attorneys for Defendant Edwin F. Meyer.

KERR & McCORD,

BERT SCHLESINGER,

Attorneys for Defendant Emar Goldberg.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 30, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [1354]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,
EMAR GOLDBERG, W. A. CORDER and
E. SILVERSTONE,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript
of Record, etc.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States
District Court, for the Western District of Wash-

ington, do hereby certify the 1365 typewritten pages, numbered from 1 to 1365, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same, together with the original plaintiff's and defendants' exhibits introduced in evidence and submitted to the jury are transmitted pursuant to the order of Court so directing, constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit. [1355]

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiffs in error for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S., as
Amended by Sec. 6, Act of March 2,
1905) for making transcript of the record for printing purposes—3520 folios
30c per folio\$1,056.00

Certificate of Clerk to typewritten transcript of record—4 folios	1.20
Seal to said certificate40
Certificate of Clerk to original exhibits—2 folios60
Seal to said certificate40
<hr/>	
	\$1,058.60

I further certify that the above cost for preparing and certifying record amounting to \$1,058.60 has been paid to me by counsel for Plaintiffs in Error.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 23rd day of April, 1914.

[Seal]

FRANK L. CROSBY,
Clerk U. S. District Court. [1356]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2039.

UNITED STATES OF AMERICA

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Writ of Error [Copy].

The President of the United States of America, to the Honorable the Judges of the District Court of the United States, for the Western District of Washington, Greeting:

Because, in the record and proceedings, as also in

the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between Edwin F. Meyer and Emar Goldberg, plaintiffs in error, and the United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Edwin F. Meyer and Emar Goldberg, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, and then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this Writ, so [1357] that you have the same at the city of San Francisco, in the State of California, within thirty days from date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable Chief Justice of the United States, the 24th day of March, in the year of

our Lord one thousand, nine hundred and thirteen.

FRANK L. CROSBY,

Clerk of the United States District Court, Western
District of Washington, Northern Division.

By Ed M. Lakin,
Deputy Clerk.

Allowed by:

JEREMIAH NETERER,

Judge.

[Indorsed]: No. 2039. In the District Court of the United States for the Western District of Washington, Northern Division, United States of America vs. Edwin F. Meyer and Emar Goldberg. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 24, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Bert Schlesinger, Claus Spreckles Building, San Francisco, Cal. [1358]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

Citation [on Writ of Error (Copy)].

By the Hon. JEREMIAH NETERER, Judge of the District Court of the United States, for the Western District of Washington, Northern Division, to the United States of America:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, in the State of California, within thirty days from date hereof, pursuant to an order and writ of error filed in the clerk's office of the District Court of the United States, for the Western District of Washington, wherein Edwin F. Meyer and Emar Goldberg, are plaintiffs in error, and United States of America is defendant in error; and you are to show cause, if any there be, why the judgment rendered against said plaintiffs in error, and each of them, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Seattle, in the Western District of Washington, and in the Northern Division thereof, this 30th day of March, 1914.

[Seal]

JEREMIAH NETERER,
Judge of the District Court of the United States, for
the Western District of Washington. [1359]

Due service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this

1494 *Edwin F. Meyer and Emar Goldberg*

30th day of March, 1914.

CLAY ALLEN,

U. S. District Attorney for Western District of
Washington, Attorney for United States of
America.

[Indorsed]: No. 2039. In the District Court of
the United States, for the Western District of Wash-
ington, Northern Division. United States of
America, Pltf., vs. Edwin F. Meyer and Emar Gold-
berg, Defts. Citation. Filed in the U. S. District
Court, Western Dist. of Washington, Northern Divi-
sion. Mar. 30, 1914. Frank L. Crosby, Clerk. By
Ed M. Lakin, Deputy. [1360]

*In the District Court of the United States, for the
Western District of Washington, Northern Divi-
sion.*

No. 2039.

UNITED STATES OF AMERICA

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Writ of Error [Original].

The President of the United States of America, to the
Honorable the Judges of the District Court of
the United States, for the Western District of
Washington, Greeting:

Because, in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court before you, or some of you,
between Edwin F. Meyer and Emar Goldberg, plain-

tiffs in error, and the United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Edwin F. Meyer and Emar Goldberg, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, and then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this Writ, so [1361] that you have the same at the city of San Francisco, in the State of California, within thirty days from date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable Chief Justice of the United States, the 24th day of March, in the year of our Lord one thousand, nine hundred and fourteen.

FRANK L. CROSBY,

Clerk of the United States District Court, Western
District of Washington, Northern Division.

By Ed M. Lakin,
Deputy Clerk.

Allowed by:

JEREMIAH NETERER,

Judge. [1362]

[Endorsed]: No. 2039. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America vs. Edwin F. Meyer and Emar Goldberg. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 24, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Clerk. [1363]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Citation [on Writ of Error (Original)].

By the Hon. JEREMIAH NETERER, Judge of the District Court of the United States, for the Western District of Washington, Northern Division, to the United States of America:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, in the State of California, within thirty days from date hereof, pursuant to an order and writ of error filed in the clerk's office of the District Court of the United States, for the Western District of Washington, wherein Edwin F. Meyer and Emar Goldberg,

are plaintiffs in error, and United States of America is defendant in error; and you are to show cause, if any there be, why the judgment rendered against said plaintiffs in error, and each of them, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Seattle, in the Western District of Washington, and in the Northern Division thereof, this 30th day of March, 1914.

[Seal] JEREMIAH NETERER,

Judge of the District Court of the United States, for the Western District of Washington. [1364]

Due service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this 30th day of March, 1914.

CLAY ALLEN,

U. S. District Attorney for Western District of Washington,

Attorney for United States of America.

[Endorsed]: No. 2039. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plff., vs. Edwin F. Meyer and Emar Goldberg, Defts. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 30, 1914. Frank L. Crosby, Clerk. Ed M. Lakin, Deputy. [1365]

[Endorsed]: No. 2413. United States Circuit Court of Appeals for the Ninth Circuit. Edwin F. Meyer and Emar Goldberg, Plaintiff in Error, vs.

United States of America, Defendant in Error.
Transcript of Record. Upon Writ of Error to the
United States District Court of the Western District
of Washington, Northern Division.

Received and filed April 27, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 2039.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,
EMAR GOLDBERG, W. A. CORDER and
E. SILVERSTONE,

Defendants.

Order Enlarging Return Day [to March 2, 1914].

On motion of the attorneys for defendants Edwin
F. Meyer and Emar Goldberg, and good cause ap-
pearing therefor,—

IT IS ORDERED that the return day mentioned
in the Citation on Writ of Error in said cause be, and
the same is hereby, enlarged to and including the 2d
day of March, 1914.

Dated Jany. 24, 1914.

WM. W. MORROW,
Judge.

[Endorsed]: No. 2413. In the United States Circuit Court of Appeals, for the Ninth Circuit. The United States of America vs. Edwin F. Meyer, J. A. Kettlewell, Emar Goldberg, W. A. Corder and E. Silverstone, Defendants. Order Enlarging Return Day. Filed Jan. 24, 1914. F. D. Monckton, Clerk. Refiled Apr. 27, 1914. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, Ninth Circuit.

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Order Extending Return Day [to May 30, 1914].

Good cause appearing therefor, on motion of BERT SCHLESINGER, one of the attorneys for said defendants.

IT IS ORDERED, that the return day of the citation issued in the above-entitled cause be and it is hereby extended to and including the 30th day of May, 1914.

April 28, 1914.

WM. W. MORROW,
Judge.

1500 *Edwin F. Meyer and Emar Goldberg*

[Endorsed]: No. 2413. In the United States Circuit Court of Appeals, Ninth Circuit. United States of America, Plaintiff, vs. Edwin F. Meyer and Emar Goldberg, Defendants. Order Extending Time. Filed Apr. 28, 1914. F. D. Monckton, Clerk.